Stephen E. Farina Prothonotary

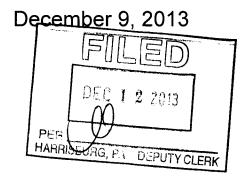


Front & Market Streets Harrisburg, PA 17101

(717) 780-6520

## County of Dauphin

MARY E. D'ANDREA Clerk of Middle District Court 228 Walnut St Harrisburg Pa 17101



Re: Stephen G Conklin Vs. Yvette Kane Dauphin County Docket. NO 2013 CV 2962-CV Middle District NO. 1:13-CV-01531

Pursuant to the Petition for Removal of Civil Action Filed in this office on December 6, 2013 to the United States District Court for the Middle District of Pennsylvania.

I am, accordingly, sending you all the original papers Herewith.

I will appreciate the return of the attached receipt Addressed to the attention of Ms. Lisandra Garcia.

Very truly yours,

Stephen & Farina

**Prothonotary** 

STEPHEN G. CONKLIN : NO. 2013 CV 2962 CV

Plaintiff,

: (Evans, J.)

YVETTE KANE : CIVIL ACTION - LAW

Defendant.

### **PRAECIPE**

#### TO THE PROTHONOTARY:

v.

Please file the attached Notice of Removal. Assistant United States Attorney

Mark E. Morrison, through counsel, the United States Attorney, has removed the
sanctions proceeding scheduled for December 9, 2013 before the Honorable Scott Arthur

Evans from the Court of Common Pleas of Dauphin County to the United States District

Court, Middle District of Pennsylvania.

Respectfully submitted,

PETER J. SMITH

United States Attorney

Dated: December 6, 2013

Michael J. Butler

Assistant United States Attorney

Federal Building

228 Walnut Street, Suite 220

P.O. Box 11754

Harrisburg, PA 17108-1754

Tel: (717) 221-4482 Fax: (717) 221-2246

|  |   |   |  | $\sim$  |                 |
|--|---|---|--|---|-----------------|
| Supreme Countrol Penns   | sylvania  |   |  | <u> </u>  | 2 pal           |
| Court of Common Ple  | as  | For Prothonolary Us   | e Only:                                  | DAUPHIN V   | PROF            |
| Dauskin  | _County   | 2013.CV   | . 29t                                    | 2 2 ×   |                 |
| The information collected on this for<br>supplement or replace the filing and  | rm is used solely for<br>service of pleadings   | · court administratio<br>or other papers as re                            | n purposes.<br>equired by lav            | This form does or rules of Co   | not             |
| Commencement of Action:  | _   |   |  | ` (   | y<br>Y          |
| ☐ Complaint ☐ Writ of Summ ☐ Transfer from Another Jurisdiction  |   | Petition<br>Declaration of Taking   |  |   |                 |
| ead Plaintiff's Name:  | ເໄລ   | Lead Defendant's Nam  |  | ne  |                 |
| Are money damages requested?   |   | Dollar Amount R   | equested:                                | ☐ within arbitr☐ outside arbit  |                 |
| Is this a Class Action Suit?   | □ Yes 🗹 No  | Is this an <i>MD</i>  | J Appeal?                                | ☐ Yes   | ₩ No            |
| Name of Plaintiff/Appellant's Attorne  | еу:   |   |  |   |                 |
| E Check here if yo   | u have no attorney  | (are a Self-Represe   | ated [Pro Se                             | Litigant)   |                 |
| Nature of the Case: Place an "X" (   | to the left of the ON   | case category that  | nost accurate                            | ly describes y  | our             |
| you consider r   | ASE. If you are mak<br>nost important.  | ing more than one ry  | 108 and 100 a                            | heck-the one  |                 |
| FORT (do not include Mass Tort)  | CONTRACT (do a  | not include Judgments)<br>F   | CIVIL AF                                 | PEALS<br>ative Agencies   |                 |
| ☐ Malicious Prosecution ☐ Motor Vehicle  | ☐ Debt Collection ☐ Debt Collection   | n: Credit Card  | ☐ Board                                  | of Assessment<br>of Elections   |                 |
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| mass tort)   | ☐ Employment I  | _   |  |   | ra              |
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| ☐ Slander/Libel/ Defamation  | Discrimination  | n i   | □ Zonın                                  | g Board   |                 |
| ☐ Other:   |   | n i   | ☐ Zonin                                  | _   |                 |
|  | Discrimination  Employment I  | n i   |  | _   |                 |
| Other:  MASS TORT  | Discrimination  | n i   |  | _   |                 |
| MASS TORT  Asbestos  | Discrimination  Employment I  | n i   |  | _   |                 |
| MASS TORT  Asbestos Tobacco Toxic Tort - DES   | Discrimination  Employment I  | n i   |  | _   |                 |
| MASS TORT  Asbestos Tobacco Toxic Tort - DES Toxic Tort - Implant  | Discrimination  Employment I  | n<br>Dispute: Other   | Other                                    | _   |                 |
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Updated 1/1/2011

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

2013 CV. 2962.CV

v.

PRAECIPE FOR

Yvette Kane

WRIT OF SUMMONS

Defendant

JURY TRIAL DEMANDED

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONTARY:

Kindly issue a Writ of Summons in the above-captioned matter, against the Defendant named therein. Attached hereto, is the individual Writ of Summons, setting forth, the part Defendant.

By:

April 4, 2013

Respectfully Submitted.

22 Mairdale Ave.,

Pittsburgh, Pa. 15214

(717) 460-5450

| IN THE COURT OF COMMON PLEAS OF DAUPHIN | COUNTY, | , PENNSYLV | 'ANIA |
|---|---------|------------|-------|
|---|---------|------------|-------|

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

v.

No.:

2013-CV-2902-CV

Yvette Kane

Defendant

WRIT OF SUMMONS

JURY TRIAL DEMANDED

WRIT OF SUMMONS

TO: Yvette Kane;

YOU ARE HEREBY NOTIFIED that Stephen G. Conklin, plaintiff, has commerced a

action against you.

Stephen E. Farina, Prothonotary

APR 04 2013 Date:

SEAL OF THE COURT

1

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION ~ LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962 CV

٧.

PRAECIPE FOR

Yvette Kane

REISSUED WRIT OF SUMMONS

Defendant

JURY TRIAL DEMANDED

#### PRAECIPE FOR REISSUED WRIT OF SUMMONS

#### TO THE PROTHONTARY:

Kindly re-issue a Writ of Summons in the above-captioned matter, against the Defendant named therein. Attached hereto, is the original Writ of Summons, setting forth, the party Defendant.

May 10, 2013

Respectfully Submitted,

By:

Stephen G Conklin 22 Mairdale Ave.,

Pittsburgh, Pa. 15214

(717) 460-5450

2013 MAY 10 PM 3: 32

# Office of the Sheriff

Shelley Ruhl Real Estate Deputy

 $Matthew \underbrace{L.}_{Solicitor} Owens$ 



Jack Duignan Chief Deputy

Michael W. Rinehart Assistant Chief Deputy

Dauphin County 101 Market Street Harrisburg, Pennsylvania 17101-2079 ph; (717) 780-6590 fax: (717) 255-2889

Jack Lotwick

Commonwealth of Pennsylvania

STEPHEN G CONKLIN

County of Dauphin

YVETTE KANE, JUDGE

Sheriff's Return No. 2013-CV-02962-CV

And now: MAY 24, 2013 at 9:16:00 AM served the within REISSUED WRIT OF SUMMONS upon YVETTE KANE, JUDGE by personally handing to NAOMI LOSCH 1 true attested copy of the original REISSUED WRIT OF SUMMONS and making known to him/her the contents thereof at FEDERAL BUILDING, 228 WALNUT STREET HARRISBURG, PA 17101

SERVED UPON LEGAL ASSISTANT AND PERSON IN CHARGE TO ACCEPT SERVICE.

So Answers,

Sheriff of Dauphin County, Pa

Deputy: T WONG

Plaintiff: STEPHEN G CONKLIN Sheriff's Costs: \$52 5/10/2013

Out Of County Cost:



## **CIVIL DIVISION**

| STEPHEN G. CONKLIN  | ;  |
|---|--|
|   | ·<br>·   |
| Vs.   | : File No. <u>2013 CV 2962 CV</u>  |
| YVETTE KANE   | <ul> <li>: PRAECIPE AND RULE TO FILE</li> <li>: ⊠ A COMPLAINT</li> <li>: □ A BILL OF PARTICULARS</li> </ul>  |
| TO THE PROTHONOTARY OF S  | AID COURT:   |
| Issue rule on Stephen G. Conklin to service of the rule or suffer a judgm | o file a <i>Complaint</i> in the above case within twenty days after nent of non pros.   |
| DATE: September 16, 2013  NOW, EP 1,8 2013, RULE ISSUE                    | Signature:  Print Name:  Address:  228 Walnut Street, Suite 220 Harrisburg PA 17108  Attorney for:  Yvette Kane  Telephone:  (717) 221-4482  Supreme Court ID No.:  LANGE  ED AS ABOVE.  Stephen C. Harrisburg  Harrisburg  PA 17108  Harrisburg |
| (NOTE: File in duplicate)   | By: Autum O. Hock Deputy   |
| protion 12  |  |

| St. Lond Co. 115      |                 | : CIVIL ACTION – LAW   |  |  |
|-----------------------|-----------------|--|--|--|
| Stephen G. Conklin    | Plaintiff       | : No.: 2013-CV-2962-CV   |  |  |
| Yvette Kane           | v.<br>Defendant | : EMERGENCY APPLICATION : FOR STAY PENDING HEARING : ON MOTION FOR SANCTIONS : : JURY TRIAL DEMANDED |  |  |
| ORDER                 |                 |  |  |  |
| AND NOW, 1            | to wit, this    | _day of, 2013, on consideration of   |  |  |
| plaintiff's Emergency | y Application   | for Stay pending resolution of Plaintiff's concurrently  |  |  |
|                       |                 |  |  |  |

filed Emergency motion for Sanctions, it is hereby ORDERED, and DECREED, that

BY THE COURT:

DISTRIBUTION LIST
MARK & MORRISON
ASSISTANT U.S. ATTORNEY.
RONALL RENGAN FEDERAL BUILDING
208 WALNUT ST., SUITE 220
TO. BUX 11754
HARRISBURG, PA. 17108-1754

Plaintiff's Application for Stay is hereby GRANTED.

Stephen G. Conklind 22 Mairdale St. Pittsburgh, Pa. 15214

CIVIL ACTION – LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

V.

EMERGENCY APPLICATION FOR STAY PENDING HEARING

Yvette Kane

ON MOTION FOR SANCTIONS

Defendant

JURY TRIAL DEMANDED

## PLAINTIFF'S EMERGENCY APPLICATION FOR STAY PENDING HEARING ON MOTION FOR SANCTIONS

NOW COMES, Stephen G. Conklin, Plaintiff in the above-captioned matter, who moves upon this Court, by way of Emergency Application, for a Stay of all proceedings pending Hearing on Plaintiff's Motion for Sanctions. In support, Plaintiff states as follows:

- Concurrent with this Application, Plaintiff has filed with this Court, an
   Emergency Motion for Sanctions with Request for Hearing; Discovery. Plaintiff
   hereby incorporates the foregoing referenced Emergency Motion as if it is fully
   set forth at length, herein.
- 2. Exigent circumstances exist that requires this Court's immediate attention, lest Plaintiff suffer needless harm and injury.
- 3. Defendant, by and through unauthorized counsel is imminently contemplating obtaining a judgment for non pros against Plaintiff, where, in the first instance required by law, said counsel has failed to serve the requisite Rule upon Haintiff to file a complaint.

PROTHONOTARY

4. Whereas, in addition to the lack of counsel's lawful authority, such failure to serve is a fatal defect to the record, that alone, would be sufficient to subsequently strike the judgment's entry, but, at the expense of Plaintiff filing a Petition with this Court to do so.

5. This is a needless and unwarranted expense and loss of property incurred solely by Plaintiff, where, this Court has cause sufficient to warrant a Stay pending opportunity to be heard.

6. "This court has not.. embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois*, 405 U.S. 645, 647.

7. This Court has the power to prevent a wrong being done.

WHEREFORE, in consideration of the foregoing, inclusive of Plaintiff's incorporated Emergency Motion, Plaintiff respectfully entreats this Court to grant Plaintiff a stay of all proceedings, pending a full and just determination following hearing of Plaintiff's Emergency Motion for Sanctions.

Respectfully Submitted,

Stephen G. Conklin/plaintiff

22 Mairdale Street

Pittsburgh, Pa. 15214

(717) 460-5450

CIVIL ACTION – LAW

Stephen G. Conklin

Plaintiff

Defendant

No.: 2013-CV-2962-CV

v.

EMERGENCY APPLICATION FOR STAY PENDING HEARING

Yvette Kane

:

ON MOTION FOR SANCTIONS

JURY TRIAL DEMANDED

#### CERTIFCATE OF SERVICE

I, Stephen G. Conklin, do hereby certify this 31<sup>st</sup> day of October, that I filed and thus caused to be served, by hand delivery, my Emergency Application for Stay upon the office of he Court Administrator for the Court of Common Pleas for Dauphin County; and further, caused a true and correct copy, prior to filing, to be served by facsimile upon Defendant's counsel and thereafter served, by U.S. Mail, postage prepaid, upon Defendant's Counsel as addressed below.

Mark E. Morrison Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 Harrisburg, Pa. 17108-1754 Fax: (717) 221-2246

Stephen G. Conklin/plaintiff

22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450

| IN THE COURT O | F COMMON PLEA | AS OF DAUPHIN | COUNTY, | PENNSYLV | ANIA |
|----------------|---------------|---------------|---------|----------|------|
|                |               |               |         |          |      |

CIVIL ACTION - LAW Stephen G. Conklin Plaintiff No.: 2013-CV-2962-CV **EMERGENCY MOTION FOR** v. SANCTIONS WITH REQUEST Yvette Kane FOR HEARING; DISCOVERY Defendant JURY TRIAL DEMANDED **ORDER** AND NOW, to wit, this \_\_\_\_\_\_ day of \_\_\_\_\_\_, upon consideration of Plaintiff's Emergency Motion for Sanctions, it is hereby ORDERED and DECREED, that Plaintiff's Emergency Motion is GRANTED. BY THE COURT:

DISTRIBUTION LIST

MAIK E. MORRISON

ASSISTANT U.S. ATTOINED

PONALE REAGON FEDERAL BUILDING

228 WAINVTST., LUITE 220

P. O. BOX 11754

HATTISHUNG, PA. 17108-1754

Stephen G. CONKIIN 22 MAINTAIR ST. PITTSLUNGH, PA. 15214

CIVIL ACTION – LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

v.

EMERGENCY MOTION FOR SANCTIONS WITH REQUEST

Yvette Kane

FOR HEARING; DISCOVERY

Defendant

JURY TRIAL DEMANDED

## PLAINTIFF'S EMERGENCY MOTION FOR SANCTIONS WITH REQUEST FOR HEARING; DISCOVERY

NOW COMES, Stephen G. Conklin, Plaintiff in the above-captioned matter,

("Plaintiff") who, for good cause, in accordance with Pa. R.Civ.P ("Rule") 1023.1 et seq.,

together with any additional Rules of Court or law applicable hereto, urgently moves

upon this Court by way of Emergency Motion for Sanctions, pursuant to Rule 1023.2; or,

in the alternative, pursuant to Rule 1023.3, this Court issue a Rule to Show Cause upon
the Defendant and/or her counsel of record, Assistant U.S. Attorney Mark E. Morrison, as
to why sanctions should not be imposed thereupon.

Plaintiff additionally requests a hearing on this matter, pursuant to Local Rule ("LR") 208.3(a)(1)(b)(i), which Plaintiff estimates forty-five (45) minutes or less is and/or will be required; and, further declares that discovery (LR 208.3(a)(1)(b)(ii)) will be necessary for purposes of a final and just disposition of Plaintiff's instant motion.

Finally, Plaintiff respectfully entreats this Court to issue a Emergency Stay of all proceedings, as filed concurrently herewith, and fully incorporated by reference, as if set forth at length herein, pending a full and just determination of the merits of this motion, following discovery and hearing. In support of this Motion, Plaintiff states as follows:

#### **STATEMENT OF AUTHORITY**

- This court has [unlimited] original jurisdiction to hear live controversies, pursuant to Pa. Constitution, Article V, Section 5; the powers for which are further enumerated, [generally] pursuant to 42 Pa.C.S. Article 1, Chapter 3, Subchapter B [§ 323] and, as further distilled under Title 42, Article 3, Chapter 9, Subchapter B [§ 912]
- 2. The instant matter involves an action commenced by Plaintiff on writ of summons that was subsequently, albeit, unlawfully removed by Defendant and thereafter, remanded by the federal court for lack of jurisdiction to this Court.

#### SUMMARY OF ISSUES EXIGENTLY PRESENTED

- 3. For reasons more fully set forth further below, this Emergency Motion for Sanctions is founded on two distinct issues:
  - (1) The total lack of authority of the Office of United States Attorney and/or Assistant U.S. Attorney, to act in any capacity on behalf of a private party [Defendant], where no evidence of federal authority, expressed or implied has been, or can be implicated; and,
  - (2) Where there exists no evidence that the [unauthorized] procurement by a U.S. Attorney's Office/Assistant U.S. Attorney of a Rule issued by the Prothonotary's office was ever served upon the Plaintiff, as otherwise required.

#### **EXIGENT CIRCUMSTANCES**

4. Plaintiff's Emergency Motion presents exigent circumstances, *infra.*, that urgently seeks to invoke this Court's timely intervention.

- 5. Plaintiff is only recently in receipt of a Ten Day Notice of Intention (dated October 21, 2013; received, evening of October 23, 2013) by Defendant's unauthorized counsel, as unequivocally sent in his official capacity.
- 6. Noteworthy, Plaintiff previously served said counsel with a "Safe Harbor" Notice, regarding, *inter alia*, said counsel's [lack of] authority to intervene; as well as the total absence of any jurisdictional prerequisite.<sup>1</sup>
- 7. Nonetheless, said counsel yet proceeds, with its Notice of Intention, ostensibly predicated upon a Rule issued/stamped/dated by the Prothonotary to file a complaint, that Plaintiff only learned about [following receipt of notice of intention] thus causing Plaintiff to promptly appear on October 24, 2013, in the Prothonotary's Office to obtain a certified copy of the docket.
- 8. To date, issuance of the Rule has never been served upon Plaintiff.
- 9. Exigent circumstances exist for this Court to imminently exercise its inherent authority, as it is believed that Defendant, by and through its [unauthorized] counsel fully intends to unlawfully obtain a judgment in *non pros* as of November 1, 2013.
- 10. Should this unlawful act be allowed to occur, Plaintiff is mindful, pursuant to Rule 1023.2(c), that he will lose his right to motion for sanctions, as, "A motion requesting sanctions under this rule *shall be filed before the entry of final judgment*." (emphasis added)

<sup>1 ... &</sup>quot;given the above, I see absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally or otherwise) for your exercise of authority to have, inter alia, either intervened or substituted partydefendant.. (emphasis added)

<sup>&</sup>lt;sup>2</sup> Entry of judgment on *non pros*, constitutes a final judgment, subject only to the timely filing of a motion to open, or in the alternative, motion to strike, before taking appeal.

- 11. Moreover, Plaintiff will be further prejudiced by an unlawful entry of *non pros* judgment as it will unnecessarily force Plaintiff to lose both property<sup>3</sup> and time/energy to either Petition to Open or Strike the *non pros* judgment.
- 12. Additionally, the interests of this Court and respective parties will be far better served by this Court timely exercising its inherent power, thus saving precious time, judicial resources and monies likely to be expended in event this Court declines invitation, [whether by motion or this Court's own initiative] and the matter is left to post-judgment motions and any appeal(s) arising therefrom.

#### **OPERATIVE FACTS**

- 13. Plaintiff hereby incorporates each and every of the preceding paragraphs as if all are fully set forth at length, herein.
- 14. On or about April 4, 2013, Plaintiff commenced an action in this Court, by writ of summons against Yvette Kane, only.
- 15. On or about May 10, 2013, the Plaintiff provided the Sheriff of Dauphin County a reissued writ for service.
- 16. Service was perfected by the Sheriff's department on or about May 24, 2013.
- 17. On or about June 7, 2013, Mark E. Morrison, in his official capacity as Civil Chief/Assistant United States Attorney caused the above-captioned matter, albeit, without jurisdiction or authority, to be promptly removed to federal court.
- 18. On or about July 8, 2013, Plaintiff filed a motion for remand, with brief in support.

<sup>&</sup>lt;sup>3</sup> Should judgment be entered, Plaintiff will lose, *inter alia*, valuable property, i.e. monies, as Dauphin County requires a fee of one hundred and sixty-two (\$162.00) dollars for Petitions to open/strike judgments.

- 19. On or about July 13, 2013, Plaintiff sent a "Safe Harbor" letter, with proof of mailing to Mark E. Morrison. Attached hereto, is a true and correct copy of the foregoing letter, together with proof of mailing, marked as Exhibit "A".
- 20. Despite Defendant and/or her attorney of record clearly being put on notice, on or about July 25, 2013, Mark E. Morrison, still acting [only] in his official capacity, filed a frivolous response in federal court to Plaintiff's motion for remand.
- 21. On or about August 27, 2013, the Honorable Timothy J. Savage, as designate-judge for the Eastern District Court, properly remanded defendant's removal action back to this Court, for lack of jurisdiction<sup>4</sup>. Pursuant to Rule 1019(g), Plaintiff hereby incorporates by reference, as a matter of record, Judge Savage's opinion and order, as if it is set forth at length herein.
- 22. On or about October 23, 2013, Plaintiff, through his attorney, filed a complaint in U.S. District Court for the Middle District of Pennsylvania, against defendant, Yvette Kane, and Mark E. Morrison, together with Peter J. Smith, and Christina Garber, docketed as 1:13-cv-2618.<sup>5</sup> Pursuant to Rule 1019(g) Plaintiff incorporates by reference as a matter of record, the aforesaid complaint, as if it is set forth at length herein.
- 23. On or about the afternoon of October 23, 2013 (dated October 21, 2013) Plaintiff received a copy of a Notice of Default for failing to file a complaint. This "Notice" is filed on behalf of U.S. Attorney, Peter J. Smith, by Mark E. Morrison,

<sup>&</sup>lt;sup>4</sup> Judge Savage states on pg. 2 fn 1 that: The *defendant* did not file a praecipe requesting the Prothonotary to issue a rule to file a complaint pursuant to Pa.R.Civ.P 1037(a). *Had* <u>she</u> <u>done</u> <u>so</u>, <u>she</u> <u>would have forced</u> <u>Conklin to state what his claims are and what relief he is seeking</u>. (emphasis added)

<sup>&</sup>lt;sup>5</sup> This federal complaint is based on *inter alia*, the unlawfully egregious nature of removal, usurping this Court's inherent authority to the deprivation of Plaintiff's Constitutional rights.

- as "Civil Chief/ Assistant U. S. Attorney". Attached hereto, is a true and correct copy of the foregoing "Notice, marked as Exhibit "B")
- 24. Alerted, Plaintiff promptly traveled to the Dauphin County's Prothonotary's office the very next day (October 24, 2013) and procured a certified/stamped copy of the docket. Attached hereto, is a true and correct copy of the certified docket, marked as Exhibit "C".
- 25. Contained within the docket, is an entry of a Rule issued by the Prothonotary's office, indicating said Rule was issued on or about September 18, 2013.
- 26. To date, the above Rule, as issued by the office of the Prothonotary, <u>has never</u> been served, as otherwise required, upon Plaintiff.
- 27. This emergency motion for sanctions now follows.

#### SANCTIONS

- 28. Plaintiff hereby incorporates each and every of the preceding paragraphs as if all are fully set forth at length herein.
- 29. Plaintiff is requesting that this Court impose sanctions, either by this Motion, or, on the Court's own initiative.
- 30. Rule 1023.2 [Motion for Sanctions] provides in pertinent parts that:
  - (a) An application for sanctions under this rule shall be made by motion, shall be made separately from other applications and shall and shall describe the specific conduct alleged to violate Rule 1023.1(c).
  - (b) No such motion shall be filed unless it includes a certification that the applicant served written notice and demand to the attorney or pro se party who signed or filed the challenged pleading, motion or other paper. The certification shall have annexed a copy of that notice and demand, which shall identify with specificity each portion of the document which is believed to violate the provisions of this rule....

- 31. The document itself, i.e. removal, was the source sought to be withdrawn; coupled to the fact that counsel lacked any authority (as further set forth below) to act on behalf of the defendant.
- 32. Be that as it may, to whatever extent (if any) Plaintiff's Emergency Motion for Sanctions does not fully comport procedurally with any requirement(s) as set forth in subsection (b) above, given the extraordinary circumstances involved, Plaintiff, respectfully seeks consideration as a pro se party, and further requests invocation of Rule 126, which provides in pertinent part that:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

- 33. Plaintiff believes, with respect to this motion, and for reasons more fully set forth below, that the Rules should be liberally construed to secure the "just, speedy and inexpensive determination" of this the instant matter.
- 34. This is all the more so as, *inter alia*, it is Defendant's Counsel who has unjustly prolonged and increased the cost of this matter a cost, and prolonging that will inevitably continue, to the prejudice of Plaintiff, without this Court's immediate intervention.
- 35. In the alternative, and possibly preferable to this Court, Plaintiff seeks this court's consideration of Rule 1023.3, which provides in pertinent part that:

On its own initiative, the court may enter an order describing the specific conduct that appears to violate Rule 1023.1(c) and directing an attorney, law firm or party to show cause why it has not violated Rule 1023.1(c) with respect thereto. (emphasis added)

- 36. With the above in mind, Plaintiff turns to Rule 1023.1, entitled, "Scope. Signing of Documents. Representations to the Court. Violation" stating in pertinent part(s) that:
  - (c) The signature of an attorney or pro se party constitutes a certification that the signatory has read the pleading, motion or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,
  - (1) it is not being presented <u>for any improper purpose</u>, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,
  - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law,
  - (3) the factual allegations have evidentiary support or, if specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and,
  - (4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information and belief.
  - (d) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (c) has been violated, the court may, subject to the conditions stated in Rules 1023.2 through 1023.4, impose an appropriate sanction upon any attorneys, law firms and parties that have violated (c) or are responsible for the violation. (emphasis added)

#### **VIOLATIONS**

- 37. With respect to the foregoing, both defendant Yvette Kane and her attorney of record, Mark E. Morrison, are, pursuant to Rule 1023.1(d) *directly responsible for the violation*(s), as further set forth below. Moreover, these violations are [an] ongoing [abuse of process] as of the date of this filing.
- 38. Both defendant and her attorney of record, knew or should have known, as seasoned attorneys, that beginning with the removal action commenced by them

- on or about June 7, 2013 was, *inter alia*, an egregious abuse of process; and, for purposes of this motion, are representative of an ongoing pattern of abuse in violation of Rule(s) 1023.1 *et seq.*, and, Fed.R.Civ.P 11.
- 39. Nonetheless, said defendant through counsel, commenced removal, in violation of the foregoing Rule(s), for *improper purposes* of *harassing and intimidating*Plaintiff; the latter, causing severe emotional distress<sup>6</sup>, by virtue of the enormous, and seemingly unbridled power vested in the U.S. Attorney's office.
- 40. Further, defendant and her counsel caused *unnecessary delay and needless*increase in expense, without justification; and more importantly, knowingly, or, with such reckless abandon, as seasoned attorneys should have known, there was absolutely no jurisdiction for them to have done so.
- 41. This "unnecessary delay and needless increase in expense" is first evidenced by Defendant/Counsel's usurping this Court's jurisdiction via removal to federal court, where, as the federal court subsequently determined, no jurisdictional basis existed, and continues [as yet unabated] resulting in the instant matter now before this Court.
- 42. This is yet further exacerbated, from its very incipience, had, as Rule 1023.1 requires, Defendant's counsel, in certifying, had actually made a "*inquiry* reasonable under the circumstances" upon which to base their "knowledge, information and belief" upon.
- 43. Had either Defendant or her counsel, both, as seasoned attorneys, *actually* done so, [and complied with the law] there simply would be no reason to be here, now.

<sup>&</sup>lt;sup>6</sup> Shortly following removal, Plaintiff became physically ill as a result. Plaintiff yet remains under doctor's care.

44. Despite this, it all is further exacerbated by the fact that Defendant's counsel's lacked any authority to act on behalf of Defendant.

#### A. Counsel's Lack of Authority to Act on Behalf of Defendant

- 45. Pursuant to USAM (United States Attorney's Manual) Chapter 3-2.000 et seq., at all material times relevant hereto, Defendant's counsel of record, Mark E Morrison, acting solely in his capacity as Assistant U.S. Attorney, is wanton of any lawful authority, statutorily or otherwise, to act on behalf of Defendant.
- 46. USAM 3-2.140 states in pertinent part that:

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party and has direction of all United States Attorneys, and their assistants, in the discharge of their respective duties...each United States Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned... By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party...(emphasis added)

47. Regarding Assistant U.S. Attorneys 3-2.200-210 states in pertinent part(s) that:

Assistant United States Attorneys are appointed by the Attorney General and may be removed by that official..[and, as to authority] Assistant United States Attorneys are responsible to the United States Attorney for the performance of duties assigned by that official. (emphasis added)

48. The above fully comports with federal statute, 28 U.S.C. § 547 entitled Duties [U.S. Attorneys] as it states in pertinent part that:

Except as otherwise provided by law, each United States attorney, within his district, shall

- (1) prosecute for all defenses <u>against the United States</u>;
- (2) prosecute or defend, for the government, all civil actions, suits or proceedings in which the United States is concerned... (emphasis added)

- 49. Clearly, there is, [save for defendant/counsel's improper inferences], no mention made by Plaintiff, expressed or implied, that the United States is, in any way, a party to Plaintiff' action.
- 50. In furtherance of the above, this Court need but look at the Honorable Judge,

  Timothy J. Savage's opinion/order, upon which he remanded back to this Court,

  Defendant/Counsel's unlawful removal.
- 51. In furtherance, it behooves this Court, in light of the above, to additionally consider the fact that, (a) Plaintiff had previously served Defendant's counsel with a "safe harbor" notice, demanding the said counsel forthwith withdraw their unlawful removal, further stating that there was, "absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally, or otherwise) for your exercise of authority to have, inter alia, intervened or substituted party-defendant.."

  (emphasis added); and (b) as illustrated by Defendant's/Counsel's Ten Day Notice of Intention, (see Exhibit "B" attached), said counsel continues to represent Defendant in his official capacity (as if still representing the United States) sans any authority, statutorily or otherwise, to do so.
- 52. Accordingly, for the reasons set forth above, this Court strike off any and all filings submitted on behalf of the Defendant by said counsel, for counsel's, clear and convincing lack of lawful authority to do so.

#### B. Failure to Provide Notice

53. For reasons previously stated above, *Plaintiff was never served with a Rule to file a complaint*, and accordingly, this Court should forthwith *estop* Defendant

- and her counsel from seeking any entry of judgment for *non pros* against Plaintiff, as imminently contemplated.
- 54. "judgment of non pros" is governed pursuant to Rule1037(a), which states in pertinent part that:
  - (a) If an action is not commenced by a complaint, the prothonotary, upon praccipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If the complaint is not filed within twenty (20) days *after service of the rule*, the prothonotary, upon praccipe of the defendant, shall enter judgment of *non pros*. (emphasis added)
- 55. "Service" of a rule to file a complaint is explicitly required by Rule 1037(a).

  Noting further:
  - The Rule provides for the entry of the judgment of non pros by the prothonotary upon "praecipe" of the defendant. This, however, cannot be filed until 20 days after "service" of the rule to file the complaint. Although there is no specific provision for an affidavit of service, it is clear that the defendant will never succeed in obtaining the entry of judgment without furnishing the prothonotary with sworn proof of the service of the rule at least 20 days prior to the date he asks for judgment. (emphasis added) 2 Goodrich-Amram 2d § 1037(a):1 Foot note omitted). Accord 7 Standard Pennsylvania Practice 2d § 39:94
- 56. Here it is clear, as evidenced by the certified docket attached hereto (Exhibit "C") there exists no "sworn proof of the service of the rule at least 20 days prior to the date he asks for judgment", or for that matter, any date, up to and including the date of the certified docket (October 24, 2013) a mere week ago.
- 57. Accordingly, the prothonotary has no authority to entertain entry of a judgment for *non pros*, because the rule to file a complaint has never been served. See, *Storm v. Golden*, 338 Pa. Super. 570 (1985) 488 A.2d 39 (Pa. 1985) (holding that,

- "prothonotary had no authority to enter judgment of non pros in favor of appellant because the rule to file a complaint was never served on appellee"<sup>7</sup>
- 58. Plaintiff has been and continues to be harmed by the unlawful actions undertaken by defendant and her attorney of record.
- 59. Plaintiff will be additionally harmed and prejudiced, incurring yet additional delay and needless expense, should this Court choose not to sanction the defendant/attorney of record for their willfully deliberate and continuing acts.
- 60. Plaintiff has been deprived of lawful notice, regarding the issuance of a Rule never served upon Plaintiff, and further, by the acts of the Assistant U.S.

  Attorney, on behalf of the Defendant, sans any lawful authority of said attorney all of which is to the detriment and expense of the Plaintiff; as well as, the public at large, who has been and will continue to be, forced to foot their bill.
- 61. Plaintiff believes, if for no other reason, the lack of notice should be sufficient for this Court to promptly act, lest additional harm and injury occur to Plaintiff.

#### **RELIEF REQUESTED**

- 62. Plaintiff hereby incorporates paragraphs each and every of the preceding paragraphs as if they are all set forth at length herein.
- 63. Plaintiff is seeking appropriate sanctions against defendant, Yvette Kane, and/or her counsel of record, Assistant U.S. Attorney, Mark E. Morrison.
- 64. Specifically, Plaintiff requests that:

<sup>&</sup>lt;sup>7</sup> See also Judge Wieand's concurring statement in <u>Golden supra</u>. "...I write separately to observe that the <u>defect in the judgment of non pros in this case was apparent on the face of the record</u>. More correctly, therefore, the <u>judgment should have been stricken</u>." (emphasis added)

- a. Defendant and/or her counsel of record, be barred from the imminently-anticipated filing of a non pros judgment against Plaintiff, for, *inter alia*, the failure of either the Assistant U.S. Attorney, or Defendant, to provide [as required] Notice of Prothonotary's issuance of Rule upon Plaintiff, and for the inherent lack of lawful authority as otherwise vested in the U.S. Attorney's office, to procure same;
- b. Assistant U.S. Attorney Mark E. Morrison, together with any other person not lawfully authorized, be barred from signing, filing, submitting, or otherwise advocating anything on behalf of a private defendant in this matter;
- With respect to the above, the Rule to file complaint as issued by the
   Prothonotary's office, on or about September 18, 2013 be quashed, or
   otherwise stricken from the record;
- d. With respect to the above, the Notice of Intention to take judgment, based on an un-served Rule, as mailed on or about October 21, 2013 be quashed, and/or otherwise deemed stricken;
- e. Hereafter, should Defendant, or any lawful private attorney duly authorized on her behalf, seek recourse upon Plaintiff, by virtue of [new] Rule issued to file a complaint, that such praecipe for Rule be filed by either the Defendant, or her private attorney so authorized, and that the same [issued Rule] be actually served upon the Plaintiff;
- f. Relief that this Court, given the unique circumstances, deems sufficient to deter such similar acts from occurring; and/or

g. Any and all additional relief, punitive or otherwise, that this Court deems just and proper.

65. Plaintiff respectfully requests that this Court, for good cause, grant Plaintiff's Motion for Sanctions and request for relief, pursuant to Rule 1023.2, or in the alternative, this Court, on its own initiative, pursuant to Rule 1023.3, issue a Rule to Show Cause upon Defendant and her counsel of record, as to why sanctions and relief requested should not be imposed; and further, grant Plaintiff any and all additional relief, punitive and/or otherwise, as this Court may, given the extraordinary and egregious nature of their acts, as this Court may deem as just and proper.

WHEREFORE, in consideration of all of the above, Plaintiff respectfully entreats this Court to grant Plaintiff, any and all manner of relief consistent with the foregoing.

Respectfully Submitted,

Stephen G. Copklin/plaintiff

22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450

CIVIL ACTION – LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

v.

EMERGENCY MOTION FOR SANCTIONS WITH REQUEST FOR HEARING; DISCOVERY

Yvette Kane

Defendant :

JURY TRIAL DEMANDED

#### **VERIFICATION**

I, Stephen G. Conklin, Plaintiff in the above-captioned matter, do hereby aver this 31<sup>st</sup> day of October, 2013 that the statements made in my Emergency Motion, are true and correct to the best of my knowledge, information and belief. The undersigned acknowledges that this statement is made subject to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Stephen G. Conklin/plaintiff 22 Mairdale Street

Pittsburgh, Pa. 15214 (717) 460-5450

#### **CERTIFICATION**

I, Stephen G. Conklin do hereby certify this 31<sup>st</sup> day of October, 2013, that I sent a true and correct copy of my emergency Motion by facsimile to Defendant's counsel (name/address/contact provided on accompanying certificate of service) and as of the time of filing Defendant's counsel concurred/did not concur/did not respond to Plaintiff's motion.

Stephen G. Conklin plaintiff

22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450



Stephen G. Conklin 22 Mairdale Street Pittsburgh, Pa. 15214 (717) 460-5450

Mark E. Morrison, Assistant U. S. Attorney c/o Office of U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 P.O. Box 11754 Harrisburg, Pa. 17108-1754

July 13, 2013

Re: Removal 1:13-cv-01531-TJS **Safe Harbor Notice** 

Dear Mr. Morrison,

This Notice is a request that you promptly withdraw your filing of Removal as indexed above. By now, you are in receipt of my Motion for Remand as accompanied by brief in support thereof. Surely you can see there exists no jurisdictional basis for your having removed my Writ of Summons from the Court of Common Pleas of Dauphin County to the U.S. District Court for the Middle District. The foregoing alone should be more than sufficient cause for you to withdraw your removal.

Further, given the above, I see absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally or otherwise) for your exercise of authority to have, *inter alia*, either intervened or substituted party-defendant; both of which raise additional serious concerns. I believe, under the present set of circumstances, absent jurisdiction, whatever immunity normally that would attach to you, is, at minimum, in dire jeopardy.

Your Notice of Removal is signed/certified pursuant to Fed.R.Civ.P 11. Given the fact that there is/was no lawful basis for your removal, I will be demanding damages in the amount of twenty thousand (\$20,000.00) dollars as sanctions for your unlawful act.

In any event sir, you are on due notice and I recommend your guide yourself accordingly.

| Respectfully,      |  |
|--------------------|--|
|                    |  |
| Stephen G. Conklin |  |





| UNITED STATES POSTAL SERVICE  | Certificate Of Mailing                        |   |
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| P.O. Box 11754 Harrist  | <u> </u>                                      | 1900 1000   |

**U.S. Department of Justice** 

United States Attorneys Office Middle District of Pennsylvania

228 Walnut Street, Suite 220 Harrisburg, Pennsylvania 17108-1754

Official Business





Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

STEPHEN G. CONKLIN : NO. 2013 CV 2962 CV

Plaintiff,

v. : ( J.)

:

YVETTE KANE : CIVIL ACTION - LAW

Defendant.

TO: Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

Date of Notice: October 21, 2013

## **IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO SUE THE DEFENDANT AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.



IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service 213 North Front Street Harrisburg, PA 17101 (717) 232-7536

PETER J. SMITH

United States Attorney

MARK E. MORRISON

Civil Chief / Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220

P.O. Box 11754

Harrisburg, PA 17108-1754

Phone: (717) 221-4482 Fax: (717) 221-2246 Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 34 of 100ser: JMAURER

Date: 10/24/2013 Time: 01:36 PM Page 2 of 2

Complete Case History Case: 2013-CV-02962-CV

## Stephen G Conklin vs. Yvette Kane

Register of Actions

Other Miscellaneous filed. 4/4/2013

No Judge,

No Judge,

No Judge,

No Judge,

No Judge,

AOPC MONTHLY CIVIL COURT STATISTICAL REPORT DATA

Writ of Summons Issued. See Praecipe,

AOPC MONTHLY CIVIL COURT

STATISTICAL REPORT DATA (AGING

**PURPOSES - CIVIL ACTION)** 

Writ of Summons Re-Issued. See 5/10/2013

Praecipe, filed.

Reissued Writ of Summons: Sheriff's 5/24/2013

Return filed stating service was completed. So answers J.R. Lotwick, Sheriff, to Yvette Kane on 5/24/2013; Assigned to Dauphin Co Sheriffs Office.

Service Fee of \$52.00.

Notice of Removal from the Court of 6/11/2013

Common Pleas of Dauphin County to the United States District Court for the Middle

District of Pennsylvania, filed.

Transferred / Withdrawn ( Civl Other )

No Judge,

No Judge,

AOPC MONTHLY CIVIL COURT STATISTICAL REPORT DATA \*\*\*\*NO MORE ENTRIES CASE

TRANSFERRED\*\*\*\*

No Judge,

No Judge,

TO MIDDLE DISTRICT COURT AND NOW, this 27th day of August, 2013, 9/6/2013

upon consideration of the Plaintiff's Motion for Remand (Document No. 4) and the defendant's response, it is ORDERED that the motion is GRANTED. IT IS FURTHER ORDERED that this action is REMANDED to the state court from which is was

removed. See Order & Memorandum Opinion filed. /s/ Timothy J Savage, J

Rule is issued upon Plaintiff to file a 9/18/2013 Complaint within 20 days of service or

suffer entry of Judgment of Non Pros. See

PRAECIPE, filed.

Defendant: Kane, Yvette Attorney of

Record: Mark E Morrison

No Judge,

No Judge,

OCT 2 4 2013

I hereby certify that the foregoing is a true and correct copy of the original filed.

**Prothonotary** 

Stephen d Harina

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

v.

EMERGENCY MOTION FOR SANCTIONS WITH REQUEST

Yvette Kane

FOR HEARING; DISCOVERY

Defendant

JURY TRIAL DEMANDED

#### CERTIFCATE OF SERVICE

I, Stephen G. Conklin, do hereby certify this 31<sup>st</sup> day of October, that I filed and thus caused to be served, by hand delivery, my Emergency Motion upon the office of he Court Administrator for the Court of Common Pleas for Dauphin County; and further, caused a true and correct copy of the foregoing motion to be served, by U.S. Mail, postage prepaid, upon Defendant's Counsel as addressed below.

Mark E. Morrison Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 Harrisburg, Pa. 17108-1754 Fax: (717) 221-2246

> Stephen G. Conklin/plainti 22 Mairdale Street

Pittsburgh, Pa. 15214 (717) 460-5450

## **CIVIL/ORPHANS' COURT ASSIGNMENTS**

CASE NAME:

Conklin v. Kane

**DOCKET NUMBER:** 

2013 CV 2962

**MATTER ASSIGNED:** 

onder Transmity) **Emergency Motion** 

**ASSIGNED JUDGE:** 

Judge Bratton

**DATE OF ASSIGNMENT: October 31, 2013** 

**Emergency Motions for Sanctions -- file is in Notes to Assigned Judge:** 

Middle District but case was remanded back to Dauphin County

**Deb Freeman** 

Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 87 of 100

#### CIVIL/ORPHANS' COURT ASSIGNMENTS

**CASE NAME:** 

Conklin v. Kane

**DOCKET NUMBER:** 

2013 CV 2962

**MATTER ASSIGNED:** 

myr Frans July & **Emergency Motion** 

**ASSIGNED JUDGE:** 

Judge Bratton

DATE OF ASSIGNMENT: October 31, 2013

Notes to Assigned Judge:

**Emergency Application for Stay -- file is in Middle** 

District but case was remanded back to Dauphin County

ENEOUR J. Coates RECUSED



| IN THE COURT OF        | COMMON PL        | EAS OF DAU       | JPHIN COUNTY, PENNSYLVANIA                        |
|------------------------|------------------|------------------|---|
|                        |                  | ;<br>;           | CIVIL ACTION ~ LAW                                |
| Stephen G. Conklin     | Plaintiff        | ;<br>;           | No.: 2013-CV-2962-CV                              |
| Yvette Kane            | v.               | :<br>:<br>:      | EMERGENCY APPLICATION<br>FOR STAY PENDING HEARING |
|                        | Defendant        | :<br>:           | ON MOTION FOR SANCTIONS                           |
|                        |                  | :<br>:           | JURY TRIAL DEMANDED                               |
|                        |                  | ORDER            |   |
| AND NOW,               | to wit, this     | _day of          | , 2013, on consideration of                       |
| plaintiff's Emergency  | Application for  | or Stay pending  | g resolution of Plaintiff's concurrently          |
| filed Emergency mot    | ion for Sanction | ns, it is hereby | ORDERED, and DECREED, that                        |
| Plaintiff's Applicatio | n for Stay is he | reby GRANTI      | ED.   |
|                        |                  |                  |   |
|                        |                  |                  |   |
|                        |                  |                  |   |
| BY THE COURT:          |                  |                  |   |

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Stephen G. Conklin

Plaintiff

CIVIL ACTION – LAW

No.: 2013-CV-2962-CV

v.

EMERGENCY APPLICATION FOR STAY PENDING HEARING

ON MOTION FOR SANCTIONS

Yvette Kane

Defendant

JURY TRIAL DEMANDED

PLAINTIFF'S EMERGENCY APPLICATION FOR STAY PENDING HEARING ON MOTION FOR SANCTIONS

NOW COMES, Stephen G. Conklin, Plaintiff in the above-captioned matter, who moves upon this Court, by way of Emergency Application, for a Stay of all proceedings pending Hearing on Plaintiff's Motion for Sanctions. In support, Plaintiff states as follows:

- Concurrent with this Application, Plaintiff has filed with this Court, an
   Emergency Motion for Sanctions with Request for Hearing; Discovery. Plaintiff
   hereby incorporates the foregoing referenced Emergency Motion as if it is fully
   set forth at length, herein.
- Exigent circumstances exist that requires this Court's immediate attention, lest
   Plaintiff suffer needless harm and injury.
- 3. Defendant, by and through unauthorized counsel is imminently contemplating obtaining a judgment for non pros against Plaintiff, where, in the first instance, as required by law, said counsel has failed to serve the requisite Rule upon Plaintiff to file a complaint.

4. Whereas, in addition to the lack of counsel's lawful authority, such failure to serve is a fatal defect to the record, that alone, would be sufficient to subsequently strike the judgment's entry, but, at the expense of Plaintiff filing a Petition with this Court to do so.

5. This is a needless and unwarranted expense and loss of property incurred solely by Plaintiff, where, this Court has cause sufficient to warrant a Stay pending opportunity to be heard.

6. "This court has not.. embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois*, 405 U.S. 645, 647.

7. This Court has the power to prevent a wrong being done.

WHEREFORE, in consideration of the foregoing, inclusive of Plaintiff's incorporated Emergency Motion, Plaintiff respectfully entreats this Court to grant Plaintiff a stay of all proceedings, pending a full and just determination following hearing of Plaintiff's Emergency Motion for Sanctions.

Respectfully Submitted,

Stephen G. Conklin/plaintiff

22 Mairdale Street

Pittsburgh, Pa. 15214

(717) 460-5450

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

٧.

EMERGENCY APPLICATION FOR STAY PENDING HEARING ON MOTION FOR SANCTIONS

Yvette Kane

Defendant

JURY TRIAL DEMANDED

#### CERTIFCATE OF SERVICE

I, Stephen G. Conklin, do hereby certify this 31<sup>st</sup> day of October, that I filed and thus caused to be served, by hand delivery, my Emergency Application for Stay upon the office of he Court Administrator for the Court of Common Pleas for Dauphin County; and further, caused a true and correct copy, prior to filing, to be served by facsimile upon Defendant's counsel and thereafter served, by U.S. Mail, postage prepaid, upon Defendant's Counsel as addressed below.

Mark E. Morrison Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 Harrisburg, Pa. 17108-1754 Fax: (717) 221-2246

Stephen G. Conklin/plaintiff 22 Mairdaie Street

Pittsburgh, Pa. 15214

(717) 460-5450

IN THE COURT OF COMMON PLEAS FOR DAUPHIN COUNTY, PENNSYLVANIA

NO. 2013 CV 29

Plaintiff,

**CIVIL ACTION - LAW** 

STEPHEN G. CONKLIN

YVETTE KANE

Defendant.

#### PRAECIPE

#### TO THE PROTHONOTARY:

Please file the attached Notice of Removal. Defendant, YVETTE KANE through counsel, the United States Attorney, has removed this matter from the Court of Common Pleas of Dauphin County to the United States District Court, Middle District of Pennsylvania.

Respectfully submitted,

PETER J. SMITH United States Attorney

MARK E. MORRISON

Civil Chief / Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220

P.O. Box 11754

Harrisburg, PA 17108-1754

Phone: (717) 221-4482 Fax: (717) 221-2246

Dated: June 7, 2013

## IN THE COURT OF COMMON PLEAS FOR DAUPHIN COUNTY, PENNSYLVANIA

STEPHEN G. CONKLIN

v.

Plaintiff,

NO. 2013 CV 2962

J.)

YVETTE KANE

**CIVIL ACTION - LAW** 

Defendant.

## NOTICE OF FILING OF NOTICE OF REMOVAL

THE HONORABLE JUDGES OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

COMES NOW, Peter J. Smith, United States Attorney for the Middle District of Pennsylvania, on behalf of Defendant YVETTE KANE, and respectfully gives notice that the attached Notice of Removal has been filed with the Clerk of Court of the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

PETER J. SMITH United States Attorney

MARK E. MORRISON

Civil Chief / Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220

P.O. Box 11754

Harrisburg, PA 17108-1754

Phone: (717) 221-4482 Fax: (717) 221-2246

Dated: June 7, 2013

# IN THE COURT OF COMMON PLEAS FOR DAUPHIN COUNTY, PENNSYLVANIA

STEPHEN G. CONKLIN : NO. 2013 CV 2962 CV

Plaintiff,

; ( J.)

:

YVETTE KANE : CIVIL ACTION - LAW

Defendant.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on June 7, 2013, she served a copy of the foregoing

#### NOTICE OF FILING OF NOTICE OF REMOVAL

by placing a copy in a postpaid envelope addressed to the persons hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelopes and contents in the United States Mail at Harrisburg, Pennsylvania to:

Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

v.

CHRISTINA GARBER
Legal Assistant

# Civil and Miscellaneous Initial Pleadings

3:02-at-06000 Plaintiff v. Defendant

#### **United States District Court**

#### Middle District of Pennsylvania

#### **Notice of Electronic Filing**

The following transaction was entered by Morrison, Mark on 6/7/2013 at 9:56 AM EDT and filed on 6/7/2013

Case Name:

Plaintiff v. Defendant

Case Number:

3:02-at-06000

Filer:

Document Number: 662

**Docket Text:** 

Notice of Removal Case Title: Stephen G. Conklin v. Yvette Kane; Court Name: Court of Common Pleas of Dauphin County, PA. . (Attachments: # (1) Civil Cover Sheet, # (2) Praecipe for & Writ of Summons)(Morrison, Mark)

3:02-at-06000 Notice has been electronically mailed to:

3:02-at-06000 Filer will deliver notice by other means to::

Defendant

Plaintiff

The following document(s) are associated with this transaction:

**Document description:** Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1027698419 [Date=6/7/2013] [FileNumber=3880700-0] [353d4c975dbb00394d19346ce0476b1a1202382058f5d4a3bf73a1113446a3a8fda9 728b8e425a2f0451280f40572b2ec377fcd319d2bd640ca390b2fcc8966a]]

**Document description:**Civil Cover Sheet

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1027698419 [Date=6/7/2013] [FileNumber=3880700-1] [60d3db0cc782e816ac6f94858345e618872f98fe436e19ef31c4945ed360102346cc 6f1169c18f2dc7b99360d60ffda0247c15972423edf6f16b899eec05fb54]]

Document description: Praecipe for & Writ of Summons

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1027698419 [Date=6/7/2013] [FileNumber=3880700-2] [a6c7ae91cc0dac172fb460ad7b69afab8a80b16868245f4d36dafac6802ff89c454e d017da738dff591e0c666ecff27f4eba4ca2b53b2d173e1040957999f34b]]

Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 46 of 100

Case 3:02-at-06000 Document 662 Filed 06/07/13 Page 1 of 3

# UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEPHEN G. CONKLIN : CIVIL NO.

.

Plaintiff, : (Judge )

•

(Filed Electronically)

YVETTE KANE

v.

Defendant.

## **NOTICE OF REMOVAL OF CIVIL ACTION**

COMES NOW, Peter J. Smith, United States Attorney for the Middle

District of Pennsylvania, by Mark E. Morrison, Assistant United States Attorney,
on behalf of Defendant, UNITED STATES OF AMERICA, and hereby gives
notice of the removal of the above-captioned matter from the Court of Common

Pleas of Dauphin County, Pennsylvania, to this Court, under the provisions of Title

28 United Sates Code, Section 1446, and respectfully represents:

- A civil action was filed against the Defendant in the Court of Common
   Pleas of Dauphin County, Pennsylvania, on or about April 4, 2013. A copy of the
   Writ of Summons is attached.
- 2. Civil actions over which United States District Courts have original jurisdiction may be removed from state court to the district court of the United States for the district embracing the place wherein it is pending. 28 U.S.C. § 1441.

Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 47 of 100

Case 3:02-at-06000 Document 662 Filed 06/07/13 Page 2 of 3

- 3. To date, Plaintiff has not served a complaint upon Defendant.
- 4. Defendant, Yvette Kane, is and at all times relevant hereto was, a
  United States District Court Judge in and for the Middle District of Pennsylvania.
- 4. Notice of Removal has this day been provided to the Prothonotary of the Court of Common Pleas of Dauphin.

WHEREFORE, the United States respectfully gives notice that the above-captioned matter is hereby removed to the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

PETER J. SMITH United States Attorney

/s/Mark E. Morrison
MARK E. MORRISON
Assistant U.S. Attorney
PA 43875
Federal Building
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, PA 17108-1754
(717) 221-4482
(717)221-2246 (Facsimile)
mark.e.morrison@usdoj.gov

Dated: June 7, 2013

Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 48 of 100 Case 3:02-at-06000 Document 662 Filed 06/07/13 Page 3 of 3

# UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEPHEN G. CONKLIN : CIVIL NO.

:

Plaintiff, : (Judge )

(Filed Electronically)

YVETTE KANE

Defendant.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on June 7, 2013, she served a copy of the foregoing

#### NOTICE OF REMOVAL OF CIVIL ACTION

by electronic means and/or by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania to:

Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

s/Christina Garber
CHRISTINA GARBER
Legal Assistant

# Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 49 of 100

JS 44 (Rev. 12/12)

# Case 3:02-at-06000 CROPLINGS LGG 2 1 SHEET 06/07/13 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

| but hose of utilitating me out a  | ORGI DIROTE   DECENTED IN THE   |  |                  |   |  |  |   |  | <del></del>   |
|---|---|--|------------------|---|--|--|---|--|---|
| I. (a) PLAINTIFFS   | ,   |  | • "              | DEFENDANTS  | \$   |  |   |  |   |
| STEPHEN G. CONKLIN  | •   |  |                  | YVETTE KANE   |  |  |   |  |   |
| (b) County of Residence of First Listed Plaintiff <u>Dauphin</u> (EXCEPT IN U.S. PLAINTIFF CASES)   |   |  |                  | County of Residence of First Listed Defendant  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  |  |  |   |  |   |
| (c) Attorneys (Firm Name, A<br>Stephen G. Conklin<br>22 Mairdale Avenue<br>Pittsburgh, PA 15214   | iddress, and Telephone Number   | <b>;</b>   |                  | Attomeys (If Known) Mark E. Morrison, U.S. Attorney's Off 228 Walnut Street,  | Civil Chief  | (AUSA)<br>A)   | ٠.  |  |   |
| II. BASIS OF JURISDI  | CTION (Place an "X" in O  | ne Box Only)   | III. CI          | TIZENSHIP OF P  | RINCIPA  | L PARTIES  | Place an "X" in (<br>and One Box fo   | One Box f  | or Plaintiff  |
| U.S. Government Plaintiff   | 3 Federal Question (U.S. Government)  | lot a Party)   | Citiz            | -   | TF DEF   | Incorporated or Pri  | ncipal Place  | PTF  | DEF   |
| ■ 2 U.S. Government     Defendant   | ☐ 4 Diversity (Indicate Citizenshi  | p of Parties in Item III)  | Citiz            | en of Another State   | 2 0 2  | Incorporated and P<br>of Business In A   |   | C) 5   | <b>(7</b> 5   |
|   |   |  |                  | en or Subject of a  | 3 3  | Foreign Nation   |   | ① 6  | <b>5</b> 6  |
| IV. NATURE OF SUIT  | (Place an "X" in One Box On   | ly)  | . No. of Physics |   |  | THE PROPERTY OF THE PARTY OF TH | Name of the state | en Aurolin   | P45:.49434  |
| 110 Insurance   120 Marine   130 Miller Act   140 Negotiable Instrument   150 Recovery of Overpayment & Enforcement of Judgment   151 Medicare Act   152 Recovery of Defaulted Student Loans (Excludes Veteran's Benefits   160 Stockholders' Suits   190 Other Contract   195 Contract Product Liability   196 Franchise   196 Franchise   210 Land Condemnation   220 Foreclosure   230 Rent Lease & Ejectment   245 Tort Product Liability   290 All Other Real Property | PERSONAL INJURY  310 Airplane 315 Airplane Product Liability 320 Asseult, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 755 Motor Vehicle 755 Motor Vehicle 7150 Motor Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice | PERSONAL INJUR  365 Personal Injury - Product Liability  367 Health Care/ Pharmaceutical Personal Injury Product Liability  368 Asbestos Personal Injury Product Liability  PERSONAL PROPES  370 Other Fraud  371 Truth in Lending Property Damage Property Damage Product Liability | Y                | 25 Drug Related Seizure of Property 21 USC 881 00 Other  10 Fair Labor Standards Act 10 Labor/Management Relations 10 Railway Labor Act 11 Family and Medical Leave Act 10 Conter Labor Litigation 11 Employee Retirement 11 Income Security Act 12 Naturalization Application 15 Other Immigration 15 Other Immigration 16 Actions | 422 Appr   423 With 28 L   2 | eal 28 USC 158 drawal ISC 157  REVERIGHTS rights at emark (1395ff) k Lung (923) C/DIWW (405(g)) D Title XVI  | 375 False Cl   400 State Re   410 Antitrus   430 Banks a   430 Comment   460 Deports   460 Deports   470 Rackete   Corrupt   480 Consum   490 Cable/S:   850 Securiti   Exchan   890 Other St   891 Agricuh   893 Environ   895 Freedon   Act   896 Arbitrat   899 Adminis   Act/Rev  | aims Act apportion at apportion at apportion at a commercial at TV ass/Commercial Acts are all a | ment  ng  ced and tions  odities/ ctions  atters mation |
|   | moved from 3 te Court   | Appellate Court  |                  | pened Anothe (specify   | er District  | 6 Multidistri  |   |  |   |
| VI. CAUSE OF ACTIO  | 128 U.S.C. § 1441   |  | e ming (         | Do not cite jurisdictional sta  | entes untess di  | reistly).  | <del> </del>  |  |   |
| VII. REQUESTED IN COMPLAINT:  | CHECK IF THIS UNDER RULE 2  | IS A CLASS ACTION<br>3, F.R.Cv.P.  | y D              | EMAND \$  |  | CHECK YES only URY DEMAND:   | if demanded in  | complai<br>□ No  | nt:   |
| VIII. RELATED CASI<br>IF ANY  | E(S) (See instructions):  | JUDGE Dauphin C  | ounty C          | ourt of Common Ple  | DOCKE  | T NUMBER 20  | 13 CV 2962  | CV.  |   |
| DATE  |   | SIGNATURE OF AT  | TORNEY           | OF RECORD   |  |  |   |  |   |
| FOR OPPICE USE ONLY   |   |  |                  |   | <del></del>  | <u> </u>   |   |  |   |
| RECEIPT # AN  | 4OUNT   | APPLYING IFP   |                  | JUDGE   |  | MAG. JUD   | XGE   |  |   |

JS 44 Reverse (Rev. 12/12)

Case 3:02-at-06000 Document 662-1 Filed 06/07/13 Page 2 of 2

### INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

  United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

  Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

  Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin. Place an "X" in one of the six boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

  Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

  Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Case 1:13-cv-01531-TJS Document-11 Filed 12/12/13 Page 51 of 100 Case 3:02-at-06000 Document 662-2 Filed 06/07/13 Page 1 of 2

#### IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Stephen G. Conklin

CIVIL ACTION - LAW

Plaintiff

Defendant

2013 CV 2962 CV

٧.

PRAECIPE FOR

Yvette Kane

WRIT OF SUMMONS

JURY TRIAL DEMANDED

#### PRAECIPE FOR WRIT OF SUMMONS

#### TO THE PROTHONTARY:

Kindly issue a Writ of Summons in the above-captioned matter, against the Defendant named therein. Attached hereto, is the individual Writ of Summons, setting forth, the part Defendant.

April 4, 2013

Respectfully Submitted.

By:

Stephen G. Conklin 22 Mairdale Ave..

Pittsburgh, Pa. 15214

(717) 460-5450

# Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 52 of 100 Case 3:02-at-06000 Document 662-2 Filed 06/07/13 Page 2 of 2

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

v.

2013.CV.2942.CV

Yvette Kane

Defendant

WRIT OF SUMMONS

JURY TRIAL DEMANDED

WRIT OF SUMMONS

TO: Yvette Kane;

YOU ARE HEREBY NOTIFIED that Stephen G. Conklin, plaintiff, has commenced an

action against you.

Stephen E. Farina, Prothonotary

APR 04 2013

SEAL OF THE COURT

ORD

# IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

| Stephen G. Conklin     |                     | :           | CIVIL ACTION – LAW                                      |              |
|------------------------|---------------------|-------------|---|--------------|
| Stephen G. Conkin      | Plaintiff           | ·<br>:      | No.: 2013-CV-2962-CV                                    |              |
| Yvette Kane            | v.<br>Defendant     | :           | EMERGENCY MOTION SANCTIONS WITH REQ FOR HEARING; DISCOV | UEST<br>VERY |
|                        | C                   | ORDER       |   |              |
| AND NOW, to wit, the   | nis day of          |             | , upon consideration of                                 | of           |
| Plaintiff's Emergency  | Motion for Sanction | ns, it is h | ereby ORDERED and DEC                                   | REED,        |
| that Plaintiff's Emerg | ency Motion is GRA  | NTED.       |   |              |
|                        |                     |             |   |              |
| BY THE COURT:          |                     |             |   | J.           |

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Stephen G. Conklin

Yvette Kane

Plaintiff :

CIVIL ACTION – LAW

No.: 2013-CV-2962-CV

v. :

EMERGENCY MOTION FOR

SANCTIONS WITH REQUEST FOR HEARING; DISCOVERY

Defendant

JURY TRIAL DEMANDED

# PLAINTIFF'S EMERGENCY MOTION FOR SANCTIONS WITH REQUEST FOR HEARING; DISCOVERY

NOW COMES, Stephen G. Conklin, Plaintiff in the above-captioned matter, ("Plaintiff") who, for good cause, in accordance with Pa. R.Civ.P ("Rule") 1023.1 et seq., together with any additional Rules of Court or law applicable hereto, urgently moves upon this Court by way of Emergency Motion for Sanctions, pursuant to Rule 1023.2; or, in the alternative, pursuant to Rule 1023.3, this Court issue a Rule to Show Cause upon the Defendant and/or her counsel of record, Assistant U.S. Attorney Mark E. Morrison, as to why sanctions should not be imposed thereupon.

Plaintiff additionally requests a hearing on this matter, pursuant to Local Rule ("LR") 208.3(a)(1)(b)(i), which Plaintiff estimates forty-five (45) minutes or less is and/or will be required; and, further declares that discovery (LR 208.3(a)(1)(b)(ii)) will be necessary for purposes of a final and just disposition of Plaintiff's instant motion.

Finally, Plaintiff respectfully entreats this Court to issue a Emergency Stay of all proceedings, as filed concurrently herewith, and fully incorporated by reference, as if set forth at length herein, pending a full and just determination of the merits of this motion, following discovery and hearing. In support of this Motion, Plaintiff states as follows:

#### STATEMENT OF AUTHORITY

- 1. This court has [unlimited] original jurisdiction to hear live controversies, pursuant to Pa. Constitution, Article V, Section 5; the powers for which are further enumerated, [generally] pursuant to 42 Pa.C.S. Article 1, Chapter 3, Subchapter B [§ 323] and, as further distilled under Title 42, Article 3, Chapter 9, Subchapter B [§ 912]
- 2. The instant matter involves an action commenced by Plaintiff on writ of summons that was subsequently, albeit, unlawfully removed by Defendant and thereafter, remanded by the federal court for lack of jurisdiction to this Court.

### SUMMARY OF ISSUES EXIGENTLY PRESENTED

- 3. For reasons more fully set forth further below, this Emergency Motion for Sanctions is founded on two distinct issues:
  - (1) The total lack of authority of the Office of United States Attorney and/or Assistant U.S. Attorney, to act in any capacity on behalf of a private party [Defendant], where no evidence of federal authority, expressed or implied has been, or can be implicated; and,
  - (2) Where there exists no evidence that the [unauthorized] procurement by a U.S. Attorney's Office/Assistant U.S. Attorney of a Rule issued by the Prothonotary's office was ever served upon the Plaintiff, as otherwise required.

#### **EXIGENT CIRCUMSTANCES**

4. Plaintiff's Emergency Motion presents exigent circumstances, *infra.*, that urgently seeks to invoke this Court's timely intervention.

- 5. Plaintiff is only recently in receipt of a Ten Day Notice of Intention (dated October 21, 2013; received, evening of October 23, 2013) by Defendant's unauthorized counsel, as unequivocally sent in his official capacity.
- 6. Noteworthy, Plaintiff previously served said counsel with a "Safe Harbor" Notice, regarding, *inter alia*, said counsel's [lack of] authority to intervene; as well as the total absence of any jurisdictional prerequisite.<sup>1</sup>
- 7. Nonetheless, said counsel yet proceeds, with its Notice of Intention, ostensibly predicated upon a Rule issued/stamped/dated by the Prothonotary to file a complaint, that Plaintiff only learned about [following receipt of notice of intention] thus causing Plaintiff to promptly appear on October 24, 2013, in the Prothonotary's Office to obtain a certified copy of the docket.
- 8. To date, issuance of the Rule has never been served upon Plaintiff.
- Exigent circumstances exist for this Court to imminently exercise its inherent
  authority, as it is believed that Defendant, by and through its [unauthorized]
  counsel fully intends to unlawfully obtain a judgment in *non pros* as of November
  1, 2013.
- 10. Should this unlawful act be allowed to occur, Plaintiff is mindful, pursuant to Rule 1023.2(c), that he will lose his right to motion for sanctions, as, "A motion requesting sanctions under this rule shall be filed before the entry of final judgment." (emphasis added)

<sup>&</sup>quot;..."given the above, I see absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally or otherwise) <u>for your exercise of authority</u> to have, *inter alia*, either intervened or substituted party-defendant.. (emphasis added)

<sup>&</sup>lt;sup>2</sup> Entry of judgment on *non pros*, constitutes a final judgment, subject only to the timely filing of a motion to open, or in the alternative, motion to strike, before taking appeal.

- 11. Moreover, Plaintiff will be further prejudiced by an unlawful entry of *non pros* judgment as it will unnecessarily force Plaintiff to lose both property<sup>3</sup> and time/energy to either Petition to Open or Strike the *non pros* judgment.
- 12. Additionally, the interests of this Court and respective parties will be far better served by this Court timely exercising its inherent power, thus saving precious time, judicial resources and monies likely to be expended in event this Court declines invitation, [whether by motion or this Court's own initiative] and the matter is left to post-judgment motions and any appeal(s) arising therefrom.

#### OPERATIVE FACTS

- 13. Plaintiff hereby incorporates each and every of the preceding paragraphs as if all are fully set forth at length, herein.
- 14. On or about April 4, 2013, Plaintiff commenced an action in this Court, by writ of summons against Yvette Kane, only.
- 15. On or about May 10, 2013, the Plaintiff provided the Sheriff of Dauphin County a reissued writ for service.
- 16. Service was perfected by the Sheriff's department on or about May 24, 2013.
- 17. On or about June 7, 2013, Mark E. Morrison, in his official capacity as Civil Chief/Assistant United States Attorney caused the above-captioned matter, albeit, without jurisdiction or authority, to be promptly removed to federal court.
- 18. On or about July 8, 2013, Plaintiff filed a motion for remand, with brief in support.

<sup>&</sup>lt;sup>3</sup> Should judgment be entered, Plaintiff will lose, *inter alia*, valuable property, i.e. monies, as Dauphin County requires a fee of one hundred and sixty-two (\$162.00) dollars for Petitions to open/strike judgments.

- 19. On or about July 13, 2013, Plaintiff sent a "Safe Harbor" letter, with proof of mailing to Mark E. Morrison. Attached hereto, is a true and correct copy of the foregoing letter, together with proof of mailing, marked as Exhibit "A".
- 20. Despite Defendant and/or her attorney of record clearly being put on notice, on or about July 25, 2013, Mark E. Morrison, still acting [only] in his official capacity, filed a frivolous response in federal court to Plaintiff's motion for remand.
- 21. On or about August 27, 2013, the Honorable Timothy J. Savage, as designate-judge for the Eastern District Court, properly remanded defendant's removal action back to this Court, for lack of jurisdiction<sup>4</sup>. Pursuant to Rule 1019(g), Plaintiff hereby incorporates by reference, as a matter of record, Judge Savage's opinion and order, as if it is set forth at length herein.
- 22. On or about October 23, 2013, Plaintiff, through his attorney, filed a complaint in U.S. District Court for the Middle District of Pennsylvania, against defendant, Yvette Kane, and Mark E. Morrison, together with Peter J. Smith, and Christina Garber, docketed as 1:13-cv-2618. Pursuant to Rule 1019(g) Plaintiff incorporates by reference as a matter of record, the aforesaid complaint, as if it is set forth at length herein.
- 23. On or about the afternoon of October 23, 2013 (dated October 21, 2013) Plaintiff received a copy of a Notice of Default for failing to file a complaint. This "Notice" is filed on behalf of U.S. Attorney, Peter J. Smith, by Mark E. Morrison,

<sup>&</sup>lt;sup>4</sup> Judge Savage states on pg. 2 fn I that: The *defendant* did not file a praecipe requesting the Prothonotary to issue a rule to file a complaint pursuant to Pa.R.Civ.P 1037(a). *Had she done so*, she would have forced Conklin to state what his claims are and what relief he is seeking. (emphasis added)

<sup>&</sup>lt;sup>5</sup> This federal complaint is based on *inter alia*, the unlawfully egregious nature of removal, usurping this Court's inherent authority to the deprivation of Plaintiff's Constitutional rights.

- as "Civil Chief/ Assistant U. S. Attorney". Attached hereto, is a true and correct copy of the foregoing "Notice, marked as Exhibit "B")
- 24. Alerted, Plaintiff promptly traveled to the Dauphin County's Prothonotary's office the very next day (October 24, 2013) and procured a certified/stamped copy of the docket. Attached hereto, is a true and correct copy of the certified docket, marked as Exhibit "C".
- 25. Contained within the docket, is an entry of a Rule issued by the Prothonotary's office, indicating said Rule was issued on or about September 18, 2013.
- 26. To date, the above Rule, as issued by the office of the Prothonotary, <u>has never</u> been <u>served</u>, as otherwise required, upon Plaintiff.
- 27. This emergency motion for sanctions now follows.

#### SANCTIONS

- 28. Plaintiff hereby incorporates each and every of the preceding paragraphs as if all are fully set forth at length herein.
- 29. Plaintiff is requesting that this Court impose sanctions, either by this Motion, or, on the Court's own initiative.
- 30. Rule 1023.2 [Motion for Sanctions] provides in pertinent parts that:
  - (a) An application for sanctions under this rule shall be made by motion, shall be made separately from other applications and shall and shall describe the specific conduct alleged to violate Rule 1023.1(c).
  - (b) No such motion shall be filed unless it includes a certification that the applicant served written notice and demand to the attorney or pro se party who signed or filed the challenged pleading, motion or other paper. The certification shall have annexed a copy of that notice and demand, which shall identify with specificity each portion of the document which is believed to violate the provisions of this rule....

- 31. The document itself, i.e. removal, was the source sought to be withdrawn; coupled to the fact that counsel lacked any authority (as further set forth below) to act on behalf of the defendant.
- 32. Be that as it may, to whatever extent (if any) Plaintiff's Emergency Motion for Sanctions does not fully comport procedurally with any requirement(s) as set forth in subsection (b) above, given the extraordinary circumstances involved, Plaintiff, respectfully seeks consideration as a pro se party, and further requests invocation of Rule 126, which provides in pertinent part that:
  - The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.
- 33. Plaintiff believes, with respect to this motion, and for reasons more fully set forth below, that the Rules should be liberally construed to secure the "just, speedy and inexpensive determination" of this the instant matter.
- 34. This is all the more so as, *inter alia*, it is Defendant's Counsel who has unjustly prolonged and increased the cost of this matter a cost, and prolonging that will inevitably continue, to the prejudice of Plaintiff, without this Court's immediate intervention.
- 35. In the alternative, and possibly preferable to this Court, Plaintiff seeks this court's consideration of Rule 1023.3, which provides in pertinent part that:
  - On its own initiative, the court may enter an order describing the specific conduct that appears to violate Rule 1023.1(c) and directing an attorney, law firm or party to show cause why it has not violated Rule 1023.1(c) with respect thereto. (emphasis added)

- 36. With the above in mind, Plaintiff turns to Rule 1023.1, entitled, "Scope. Signing of Documents. Representations to the Court. Violation" stating in pertinent part(s) that:
  - (c) The signature of an attorney or pro se party constitutes a certification that the signatory has read the pleading, motion or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,
  - (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,
  - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law,
  - (3) the factual allegations have evidentiary support or, if specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and,
  - (4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information and belief.
  - (d) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (c) has been violated, the court may, subject to the conditions stated in Rules 1023.2 through 1023.4, impose an appropriate sanction upon any attorneys, law firms and parties that have violated (c) or are responsible for the violation. (emphasis added)

#### **VIOLATIONS**

- 37. With respect to the foregoing, both defendant Yvette Kane and her attorney of record, Mark E. Morrison, are, pursuant to Rule 1023.1(d) directly responsible for the violation(s), as further set forth below. Moreover, these violations are [an] ongoing [abuse of process] as of the date of this filing.
- 38. Both defendant and her attorney of record, knew or should have known, as seasoned attorneys, that beginning with the removal action commenced by them

- on or about June 7, 2013 was, *inter alia*, an egregious abuse of process; and, for purposes of this motion, are representative of an ongoing pattern of abuse in violation of Rule(s) 1023.1 *et seq.*, and, Fed.R.Civ.P 11.
- 39. Nonetheless, said defendant through counsel, commenced removal, in violation of the foregoing Rule(s), for *improper purposes* of *harassing and intimidating*Plaintiff; the latter, causing severe emotional distress<sup>6</sup>, by virtue of the enormous, and seemingly unbridled power vested in the U.S. Attorney's office.
- 40. Further, defendant and her counsel caused *unnecessary delay and needless*increase in expense, without justification; and more importantly, knowingly, or, with such reckless abandon, as seasoned attorneys should have known, there was absolutely no jurisdiction for them to have done so.
- 41. This "unnecessary delay and needless increase in expense" is first evidenced by Defendant/Counsel's usurping this Court's jurisdiction via removal to federal court, where, as the federal court subsequently determined, no jurisdictional basis existed, and continues [as yet unabated] resulting in the instant matter now before this Court.
- 42. This is yet further exacerbated, from its very incipience, had, as Rule 1023.1 requires, Defendant's counsel, in certifying, had actually made a "inquiry reasonable under the circumstances" upon which to base their "knowledge, information and belief" upon.
- 43. Had either Defendant or her counsel, both, as seasoned attorneys, *actually* done so, [and complied with the law] there simply would be no reason to be here, now.

<sup>&</sup>lt;sup>6</sup> Shortly following removal, Plaintiff became physically ill as a result. Plaintiff yet remains under doctor's care.

44. Despite this, it all is further exacerbated by the fact that Defendant's counsel's lacked any authority to act on behalf of Defendant.

# A. Counsel's Lack of Authority to Act on Behalf of Defendant

- 45. Pursuant to USAM (United States Attorney's Manual) Chapter 3-2.000 et seq., at all material times relevant hereto, Defendant's counsel of record, Mark E Morrison, acting solely in his capacity as Assistant U.S. Attorney, is wanton of any lawful authority, statutorily or otherwise, to act on behalf of Defendant.
- 46. USAM 3-2.140 states in pertinent part that:

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party and has direction of all United States Attorneys, and their assistants, in the discharge of their respective duties...each United States Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned... By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party...(emphasis added)

47. Regarding Assistant U.S. Attorneys 3-2.200-210 states in pertinent part(s) that:

Assistant United States Attorneys are appointed by the Attorney General and may be removed by that official..[and, as to authority] Assistant United States Attorneys are responsible to the United States Attorney for the performance of duties assigned by that official. (emphasis added)

48. The above fully comports with federal statute, 28 U.S.C. § 547 entitled Duties [U.S. Attorneys] as it states in pertinent part that:

Except as otherwise provided by law, each United States attorney, within his district, shall

- (1) prosecute for all defenses <u>against the United States</u>;
- (2) prosecute or defend, for the government, all civil actions, suits or proceedings in which the United States is concerned... (emphasis added)

- 49. Clearly, there is, [save for defendant/counsel's improper inferences], no mention made by Plaintiff, expressed or implied, that the United States is, in any way, a party to Plaintiff' action.
- 50. In furtherance of the above, this Court need but look at the Honorable Judge,

  Timothy J. Savage's opinion/order, upon which he remanded back to this Court,

  Defendant/Counsel's unlawful removal.
- 51. In furtherance, it behooves this Court, in light of the above, to additionally consider the fact that, (a) Plaintiff had previously served Defendant's counsel with a "safe harbor" notice, demanding the said counsel forthwith withdraw their unlawful removal, further stating that there was, "absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally, or otherwise) for your exercise of authority to have, inter alia, intervened or substituted party-defendant.."

  (emphasis added); and (b) as illustrated by Defendant's/Counsel's Ten Day Notice of Intention, (see Exhibit "B" attached), said counsel continues to represent Defendant in his official capacity (as if still representing the United States) sans any authority, statutorily or otherwise, to do so.
- 52. Accordingly, for the reasons set forth above, this Court strike off any and all filings submitted on behalf of the Defendant by said counsel, for counsel's, clear and convincing lack of lawful authority to do so.

#### B. Failure to Provide Notice

53. For reasons previously stated above, *Plaintiff was never served with a Rule to*file a complaint, and accordingly, this Court should forthwith estop Defendant

- and her counsel from seeking any entry of judgment for *non pros* against Plaintiff, as imminently contemplated.
- 54. "judgment of non pros" is governed pursuant to Rule1037(a), which states in pertinent part that:
  - (a) If an action is not commenced by a complaint, the prothonotary, upon praccipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If the complaint is not filed within twenty (20) days after service of the rule, the prothonotary, upon praccipe of the defendant, shall enter judgment of non pros. (emphasis added)
- 55. "Service" of a rule to file a complaint is explicitly required by Rule 1037(a).

  Noting further:
  - The Rule provides for the entry of the judgment of non pros by the prothonotary upon "praecipe" of the defendant. This, however, cannot be filed until 20 days after "service" of the rule to file the complaint. Although there is no specific provision for an affidavit of service, it is clear that the defendant will never succeed in obtaining the entry of judgment without furnishing the prothonotary with sworn proof of the service of the rule at least 20 days prior to the date he asks for judgment. (emphasis added) 2 Goodrich-Amram 2d § 1037(a):1 Foot note omitted). Accord 7 Standard Pennsylvania Practice 2d § 39:94
- 56. Here it is clear, as evidenced by the certified docket attached hereto (Exhibit "C") there exists no "sworn proof of the service of the rule at least 20 days prior to the date he asks for judgment", or for that matter, any date, up to and including the date of the certified docket (October 24, 2013) a mere week ago.
- 57. Accordingly, the prothonotary has no authority to entertain entry of a judgment for *non pros*, because the rule to file a complaint has never been served. See, <u>Storm v. Golden</u>, 338 Pa. Super. 570 (1985) 488 A.2d 39 (Pa. 1985) (holding that,

- "prothonotary had no authority to enter judgment of non pros in favor of appellant because the rule to file a complaint was never served on appellee"<sup>7</sup>
- 58. Plaintiff has been and continues to be harmed by the unlawful actions undertaken by defendant and her attorney of record.
- 59. Plaintiff will be additionally harmed and prejudiced, incurring yet additional delay and needless expense, should this Court choose not to sanction the defendant/attorney of record for their willfully deliberate and continuing acts.
- 60. Plaintiff has been deprived of lawful notice, regarding the issuance of a Rule never served upon Plaintiff, and further, by the acts of the Assistant U.S.

  Attorney, on behalf of the Defendant, sans any lawful authority of said attorney—all of which is to the detriment and expense of the Plaintiff; as well as, the public at large, who has been and will continue to be, forced to foot their bill.
- 61. Plaintiff believes, if for no other reason, the lack of notice should be sufficient for this Court to promptly act, lest additional harm and injury occur to Plaintiff.

#### RELIEF REQUESTED

- 62. Plaintiff hereby incorporates paragraphs each and every of the preceding paragraphs as if they are all set forth at length herein.
- 63. Plaintiff is seeking appropriate sanctions against defendant, Yvette Kane, and/or her counsel of record, Assistant U.S. Attorney, Mark E. Morrison.
- 64. Specifically, Plaintiff requests that:

<sup>&</sup>lt;sup>7</sup> See also Judge Wieand's concurring statement in <u>Golden supra</u>. "... I write separately to observe that the <u>defect in the judgment of non pros in this case was apparent on the face of the record</u>. More correctly, therefore, the <u>judgment should have been stricken</u>." (emphasis added)

- a. Defendant and/or her counsel of record, be barred from the imminently-anticipated filing of a non pros judgment against Plaintiff, for, *inter alia*, the failure of either the Assistant U.S. Attorney, or Defendant, to provide [as required] Notice of Prothonotary's issuance of Rule upon Plaintiff, and for the inherent lack of lawful authority as otherwise vested in the U.S. Attorney's office, to procure same;
- b. Assistant U.S. Attorney Mark E. Morrison, together with any other person not lawfully authorized, be barred from signing, filing, submitting, or otherwise advocating anything on behalf of a private defendant in this matter;
- With respect to the above, the Rule to file complaint as issued by the
   Prothonotary's office, on or about September 18, 2013 be quashed, or
   otherwise stricken from the record;
- d. With respect to the above, the Notice of Intention to take judgment, based on an un-served Rule, as mailed on or about October 21, 2013 be quashed, and/or otherwise deemed stricken;
- e. Hereafter, should Defendant, or any lawful private attorney duly authorized on her behalf, seek recourse upon Plaintiff, by virtue of [new] Rule issued to file a complaint, that such praecipe for Rule be filed by either the Defendant, or her private attorney so authorized, and that the same [issued Rule] be actually served upon the Plaintiff;
- f. Relief that this Court, given the unique circumstances, deems sufficient to deter such similar acts from occurring; and/or

g. Any and all additional relief, punitive or otherwise, that this Court deems just and proper.

65. Plaintiff respectfully requests that this Court, for good cause, grant Plaintiff's Motion for Sanctions and request for relief, pursuant to Rule 1023.2, or in the alternative, this Court, on its own initiative, pursuant to Rule 1023.3, issue a Rule to Show Cause upon Defendant and her counsel of record, as to why sanctions and relief requested should not be imposed; and further, grant Plaintiff any and all additional relief, punitive and/or otherwise, as this Court may, given the extraordinary and egregious nature of their acts, as this Court may deem as just and proper.

WHEREFORE, in consideration of all of the above, Plaintiff respectfully entreats this Court to grant Plaintiff, any and all manner of relief consistent with the foregoing.

Respectfully Submitted,

Stephen G. Conklin/plaintiff

22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450

## IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

v.

EMERGENCY MOTION FOR SANCTIONS WITH REQUEST FOR HEARING; DISCOVERY

Yvette Kane

Defendant

JURY TRIAL DEMANDED

#### **VERIFICATION**

I, Stephen G. Conklin, Plaintiff in the above-captioned matter, do hereby aver this 31<sup>st</sup> day of October, 2013 that the statements made in my Emergency Motion, are true and correct to the best of my knowledge, information and belief. The undersigned acknowledges that this statement is made subject to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Stephen G. Conklin/plaintiff 22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450

#### CERTIFICATION

I, Stephen G. Conklin do hereby certify this 31<sup>st</sup> day of October, 2013, that I sent a true and correct copy of my emergency Motion by facsimile to Defendant's counsel (name/address/contact provided on accompanying certificate of service) and as of the time of filing Defendant's counsel concurred/did not concurred did not respond to Plaintiff's motion.

Stephen G. Conklin/plaintiff

22 Mairdale Street Pittsburgh, Pa. 15214 (717) 460-5450 A

Stephen G. Conklin 22 Mairdale Street Pittsburgh, Pa. 15214 (717) 460-5450

Mark E. Morrison, Assistant U. S. Attorney c/o Office of U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 P.O. Box 11754 Harrisburg, Pa. 17108-1754

July 13, 2013

Re: Removal 1:13-cv-01531-TJS

Safe Harbor Notice

Dear Mr. Morrison,

This Notice is a request that you promptly withdraw your filing of Removal as indexed above. By now, you are in receipt of my Motion for Remand as accompanied by brief in support thereof. Surely you can see there exists no jurisdictional basis for your having removed my Writ of Summons from the Court of Common Pleas of Dauphin County to the U.S. District Court for the Middle District. The foregoing alone should be more than sufficient cause for you to withdraw your removal.

Further, given the above, I see absolutely no basis, and/or lawful ground, (jurisdictionally, procedurally or otherwise) for your exercise of authority to have, *inter alia*, either intervened or substituted party-defendant; both of which raise additional serious concerns. I believe, under the present set of circumstances, absent jurisdiction, whatever immunity normally that would attach to you, is, at minimum, in dire jeopardy.

Your Notice of Removal is signed/certified pursuant to Fed.R.Civ.P 11. Given the fact that there is/was no lawful basis for your removal, I will be demanding damages in the amount of twenty thousand (\$20,000.00) dollars as sanctions for your unlawful act.

In any event sir, you are on due notice and I recommend your guide yourself accordingly.

Respectfully,

Stephen G. Conklin





| POSTAL SERVICE •   | Certificate Of Mailing                         |                |             |
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U.S. Department of Justice
United States Attorneys Office
Middle District of Pennsylvania
228 Walnut Street, Suite 220
Harrisburg, Pennsylvania 17108-1754
Official Business





Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

## IN THE COURT OF COMMON PLEAS FOR DAUPHIN COUNTY, PENNSYLVANIA

STEPHEN G. CONKLIN

NO. 2013 CV 2962 CV

Plaintiff,

J.)

YVETTE KANE

v.

**CIVIL ACTION - LAW** 

Defendant.

TO: Stephen G. Conklin 22 Mairdale Avenue Pittsburgh, PA 15214

Date of Notice:

October 21, 2013

# **IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO SUE THE DEFENDANT AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.



IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service 213 North Front Street Harrisburg, PA 17101 (717) 232-7536

PETER J. SMITH

United States Attorney

MARK E. MORŘISON

Civil Chief / Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220

P.O. Box 11754

Harrisburg, PA 17108-1754

Phone: (717) 221-4482 Fax: (717) 221-2246 Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 74 of 100

Date: 10/24/2013

**Dauphin County** 

User: JMAURER

Time: 01:36 PM

Page 2 of 2

Complete Case History Case: 2013-CV-02962-CV

Stephen G Conklin vs. Yvette Kane

Register of Actions

Other Miscellaneous filed. 4/4/2013

No Judge,

No Judge,

No Judge,

No Judge,

No Judge,

AOPC MONTHLY CIVIL COURT STATISTICAL REPORT DATA

Writ of Summons Issued. See Praecipe,

filed.

AOPC MONTHLY CIVIL COURT

STATISTICAL REPORT DATA (AGING

PURPOSES - CIVIL ACTION)

Writ of Summons Re-Issued. See 5/10/2013

Praecipe, filed.

Reissued Writ of Summons: Sheriff's 5/24/2013

> Return filed stating service was completed. So answers J.R. Lotwick, Sheriff, to Yvette Kane on 5/24/2013; Assigned to Dauphin Co Sheriffs Office.

Service Fee of \$52.00.

6/11/2013 Notice of Removal from the Court of

> Common Pleas of Dauphin County to the United States District Court for the Middle

District of Pennsylvania, filed.

Transferred / Withdrawn ( Civl Other )

No Judge,

No Judge,

No Judge,

No Judge,

AOPC MONTHLY CIVIL COURT STATISTICAL REPORT DATA \*\*\*\*NO MORE ENTRIES CASE

TRANSFERRED\*\*\*\*

TO MIDDLE DISTRICT COURT

9/6/2013 AND NOW, this 27th day of August, 2013,

upon consideration of the Plaintiff's Motion for Remand (Document No. 4) and the defendant's response, it is ORDERED that the motion is GRANTED. IT IS FURTHER ORDERED that this action is REMANDED to the state court from which is was removed. See Order & Memorandum Opinion filed. /s/ Timothy J Savage, J

9/18/2013

Rule is issued upon Plaintiff to file a Complaint within 20 days of service or

suffer entry of Judgment of Non Pros. See PRAECIPE, filed.

Defendant: Kane, Yvette Attorney of

Record: Mark E Morrison

No Judge,

No Judge,

OCT 2 4 2013

I hereby certify that the foregoing is a true and correct copy of the original filed.

**Prothonotary** 

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Stephen G. Conklin

Plaintiff

No.: 2013-CV-2962-CV

٧.

EMERGENCY MOTION FOR SANCTIONS WITH REQUEST

Yvette Kane

FOR HEARING; DISCOVERY

Defendant

JURY TRIAL DEMANDED

#### CERTIFCATE OF SERVICE

I, Stephen G. Conklin, do hereby certify this 31st day of October, that I filed and thus caused to be served, by hand delivery, my Emergency Motion upon the office of he Court Administrator for the Court of Common Pleas for Dauphin County; and further, caused a true and correct copy of the foregoing motion to be served, by U.S. Mail, postage prepaid, upon Defendant's Counsel as addressed below.

Mark E. Morrison Assistant U.S. Attorney Ronald Reagan Federal Building 228 Walnut Street, Suite 220 Harrisburg, Pa. 17108-1754 Fax: (717) 221-2246

Stephen G. Conklin/plainti

22 Mairdale Street Pittsburgh, Pa. 15214

(717) 460-5450

# Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 76 of 100

STEPHEN G. CONKLIN,

IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

**Plaintiff** 

Defendant

VS.

No. 2013 CV 2962

YVETTE KANE,

**CIVIL ACTION - LAW** 

# 1013 HOW 15 FM 11:55

## WITHDRAWAL OF APPEARANCE

## TO THE PROTHONOTARY:

Please withdraw the appearance of Mark E. Morrison as counsel for Defendant

Yvette Kane.

Date: November 14, 2013

Mark E. Morrison (PA 43875)

Mark & Z

Assistant US Attorney Federal Building

228 Walnut Street, Suite 220

Post Office Box 11754 Harrisburg, PA 17108

717-221-4482 (telephone)

717-221-2246 (facsimile)

mark.e.morrison@usdoj.gov

I hereby certify that on November 14, 2013, a copy of the foregoing document was served via U.S. mail, first class postage prepaid, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Mark E. Morrison

## Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 78 of 100

STEPHEN G. CONKLIN.

IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff

.

VS.

No. 2013 CV 2962

YVETTE KANE,

:

Defendant

**CIVIL ACTION - LAW** 

#### ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance for Defendant Yvette Kane.

Thomas B. Schmidt, III (PA 19196)

Tucker R. Hull (PA 306426) PEPPER HAMILTON LLP 100 Market Street, Suite 200

Post Office Box 1181

Harrisburg, PA 17108-1181

(717) 255-1155 (717) 238-0575 Fax schmidtt@pepperlaw.com hullt@pepperlaw.com

Dated: November 15, 2013 Attorneys for Defendant

Yvette Kane

I hereby certify that on November 15, 2013, a copy of the foregoing document was served via U.S. mail, first class postage prepaid, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Thomas B. Schmidt, III

## Case 1:13-cv-01531-TJS Document 11 Filed 12/12/13 Page 80 of 100

STEPHEN G. CONKLIN,

IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff

VS.

No. 2013 CV 2962

YVETTE KANE,

Defendant

**CIVIL ACTION - LAW** 

## **ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter our appearance for Defendant Yvette Kane.

Thomas B. Schmidt, III (PA 19196)

Tucker R. Hull (PA 306426) PEPPER HAMILTON LLP 100 Market Street, Suite 200

Post Office Box 1181

Harrisburg, PA 17108-1181

(717) 255-1155 (717) 238-0575 Fax schmidtt@pepperlaw.com

hullt@pepperlaw.com

Dated: November 15, 2013

Attorneys for Defendant

Yvette Kane

I hereby certify that on November 15, 2013, a copy of the foregoing document was served via U.S. mail, first class postage prepaid, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Thomas B. Schmidt, III

STEPHEN G. CONKLIN,

IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff

VS.

No. 2013 CV 2962

YVETTE KANE,

Defendant

**CIVIL ACTION - LAW** 

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## WITHDRAWAL OF APPEARANCE

## TO THE PROTHONOTARY:

Please withdraw the appearance of Mark E. Morrison as counsel for Defendant

Yvette Kane.

Date: November 14, 2013

Mark E. Morrison (PA 43875)

Mark 8.2 -

Assistant US Attorney

Federal Building

228 Walnut Street, Suite 220

Post Office Box 11754

Harrisburg, PA 17108

717-221-4482 (telephone)

717-221-2246 (facsimile)

mark.e.morrison@usdoj.gov

I hereby certify that on November 14, 2013, a copy of the foregoing document was served via U.S. mail, first class postage prepaid, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Mark E. Morrison

0

STEPHEN G. CONKLIN,

IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff

VS.

No. 2013 CV 2962

YVETTE KANE,

Defendant

**CIVIL ACTION - LAW** 

## **ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter our appearance for Defendant Yvette Kane.

Thomas B. Schmidt, III (PA 19196)

Tucker R. Hull (PA 306426) PEPPER HAMILTON LLP 100 Market Street, Suite 200

Post Office Box 1181 Harrisburg, PA 17108-1181

(717) 255-1155 (717) 238-0575 Fax schmidtt@pepperlaw.com hullt@pepperlaw.com

Dated: November 15, 2013 Attorneys for Defendant

Yvette Kane

I hereby certify that on November 15, 2013, a copy of the foregoing document was served via U.S. mail, first class postage prepaid, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Thomas B. Schmidt, III

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STEPHEN G. CONKLIN,

Plaintiff

: IN THE COURT OF COMMON PLEAS

: DAUPHIN COUNTY, PENNSYLVANIA

VS.

: NO. 2013-CV-2962

YVETTE KANE,

Defendant

: CIVIL ACTION - LAW

## **ORDER**

AND NOW, this 25th day of November, 2013, upon consideration of Plaintiff's Emergency Motion for Sanctions with Request for Hearing/Discovery, it is hereby ORDERED that a hearing in this matter is scheduled for *December 9, 2013 at 11:00 a.m.* in Courtroom No.

BY THE COURT:

Scott Arthur Evans, Judge

Distribution:

2.

Stephen G. Conklin, Esq., 22 Mairdale St., Pittsburgh, PA 15214

Thomas B. Schmidt, III, Esq., 100 Market St., Ste. 200, P.O. Box 1181, Harrisburg, PA 17108

Mark E. Morrison, Esq., 228 Walnut St., Ste. 220, P.O. Box 11754

Chambers of Judge Scott Arthur Evans

Thomas B. Schmidt, III, (PA 19196) Tucker R. Hull (PA 306426) PEPPER HAMILTON LLP Suite 200, 100 Market Street P.O. Box 1181 Harrisburg, PA 17108-1181 (717) 255-1155 (717) 238-0575 Fax Attorneys for Defendant

STEPHEN G. CONKLIN, : IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff

vs. : No. 2013 CV 2962

YVETTE KANE,

Defendant : CIVIL ACTION - LAW

## **DEFENDANT'S MOTION TO QUASH PLAINTIFF'S MOTION FOR SANCTIONS**

Defendant Yvette Kane, by her undersigned counsel, moves this Court to quash Plaintiff's Emergency Motion for Sanctions with Request for Hearing; Discovery ("Sanctions Motion") for lack of jurisdiction. Defendant denies that there is any merit whatsoever to Plaintiff's Sanctions Motions; even accepting as true Plaintiff's allegations, distinct from his conclusory assertions, there has been no violation of state or federal rules governing the filing of signed documents in state or federal courts. But, regardless of the merits, this Court lacks

<sup>&</sup>lt;sup>1</sup> Hon. Yvette Kane is a sitting judge of the United States District Court for the Middle District of Pennsylvania. By filing this motion to quash, Judge Kane does not waive, and hereby reserves, her immunity from suit. See Mireles v. Waco, 502 U. S. 9 (1991).

jurisdiction to grant the relief sought by Plaintiff because, as shown below, the filing that is the subject of his Sanctions Motion was made in federal court, not this Court.

## **Background**

- 1. On April 4, 2013, this case was initiated with the filing of a praecipe for a Writ of Summons, which was issued that day.
  - 2. On May 10, 2013, the Writ of Summons was re-issued.
- 3. On May 24, 2013, the Writ of Summons was delivered to the office of the United States Attorney for the Middle District of Pennsylvania, which was authorized to accept service on behalf of Defendant.
- 4. On June 11, 2013, pursuant to 28 U.S.C. §§ 1441, 1442 and 1446, a

  Notice of Removal from the Court of Common Pleas of Dauphin County to the United States

  District Court for the Middle District of Pennsylvania ("Middle District") was filed by Assistant

  United States Attorney Mark E. Morrison as counsel for Defendant.
- 5. Plaintiff filed a motion to remand in the Middle District, which was granted on August 27, 2013, because Hon. Timothy J. Savage<sup>2</sup> concluded that the propriety of removal could not be determined until a complaint is filed by Plaintiff in this action.
- 6. On September 18, 2013, following remand, a Rule was issued by this Court directing Plaintiff to file a complaint.
- 7. On October 31, 2013, before the Rule was served, Plaintiff filed his Sanctions Motion together with an "Emergency Application for a Stay" pending a hearing on the Sanctions Motion.

<sup>&</sup>lt;sup>2</sup> Judge Savage of the United States District Court for the Eastern District of Pennsylvania was sitting by designation pursuant to 28 U.S.C. § 292(b).

- 8. On November 15, 2013, the undersigned counsel entered their appearance for Defendant because Plaintiff has filed a separate action in the Middle District against Defendant, Assistant United States Attorney Morrison, United States Attorney Peter Smith, and a paralegal in the United States Attorney's office, asserting claims directly related to the June removal of this action.
- 9. On November 19, 2013, the Rule directing Plaintiff to file a complaint within 20 days or suffer entry of judgment of non pros was served on Plaintiff pursuant to Pa. R.C.P. 440 and 1037.
- 10. As of the date of filing this Motion to Quash, Plaintiff has not filed a complaint in this action.

## A Notice of Removal Filed in Federal Court Is Not Subject to Pa. R.C.P. 1023.1 et seq.

- 11. Plaintiff's Sanctions Motion seeks relief pursuant to Pa. R.C.P. 1023.1 et seq.
- 12. Plaintiff's Sanctions Motion alleges that the removal of this action to the Middle District by Defendant's former counsel Assistant United States Attorney Morrison was done for the improper purpose of harassing and intimidating Plaintiff. (Sanctions Motion, ¶¶ 37-41).<sup>3</sup>
- 13. Rule 1023.1 only applies to documents filed in state court proceedings. Pa. R.C.P. 1023.1(b).
  - 14. Rule 1023.1(b) states in relevant part that:

<sup>&</sup>lt;sup>3</sup> While the Sanctions Motion raised other issues (Sanctions Motion, ¶ 64), those issues are now moot due to intervening events. Specifically, Assistant United States Attorney Morrison has withdrawn his appearance on behalf of Defendant and undersigned counsel have replaced him. Additionally, no default judgment was entered, and undersigned counsel served Plaintiff with a Rule to file a complaint on November 19, 2013.

(b) Every pleading, written motion, and other paper directed to the court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . .

## Id. (emphasis added).

- 15. Because the Notice of Removal was not filed in state court, Rule 1023.1 does not apply.
- 16. Because the Notice of Removal is not subject to Rule 1023.1, this Court lacks jurisdiction to impose sanctions on Defendant's former counsel and the Sanctions Motion should be quashed.

# This Court Lacks Jurisdiction to Consider Whether Sanctions are Appropriate for Improper Removal

- 17. The Notice of Removal was filed in federal court pursuant to 28 U.S.C. §§ 1441, 1442 and 1446.
  - 18. 28 U.S.C. §1446(a) states in relevant part that:
  - [a] defendant or defendants desiring to remove any civil action or criminal prosecution from state court shall file in the district court of the United States for the district and division within such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

## Id. (emphasis added).

- 19. Fed. R. Civ. P. 11 provides that:
- (a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. . . .
- **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies.

## (c) Sanctions.

- (1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction. . . .
- Court for the Middle District of Pennsylvania and is subject to Fed R. Civ. P. 11, jurisdiction to impose sanctions for the filing belongs to the Middle District. *See e.g. Unanue-Casal v. Unanue-Casal*, 898 F.2d 839, 841 (1st Cir. 1990) ("even after a federal district court determines that it lacks jurisdiction of a case, it retains jurisdiction to consider whether it process was abused during the course of that determination."); *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600, 603 (1st Cir. 1988) (explaining that even after remand, a federal court has the jurisdiction to punish with sanctions for the abuse of its process); *Willy v. Coastal Corp.*, 855 F.2d 1160, 1172 (5th Cir. 1988) ("we and the district court retain jurisdiction over the Rule 11 aspect of this case, even though we have held that removal was improper").
- 21. The Middle District has jurisdiction, and this Court does not have jurisdiction, to determine whether sanctions are appropriate for the filing of the Notice of Removal.
- 22. Oral argument on this Motion is hereby requested. Undersigned counsel anticipates that argument will take no longer than 30 minutes.
  - 23. No discovery is necessary on this Motion.

WHEREFORE, Defendant Yvette Kane requests that this Court quash Plaintiff's Sanctions Motion for lack of jurisdiction.

Dated: December 4, 2013

Respectfully submitted,

Thomas B. Schmidt, III (PA 19196)
Tucker R. Hull (PA 306426)
PEPPER HAMILTON LLP
100 Market Street, Suite 200
Post Office Box 1181
Harrisburg, PA 17108-1181
(717) 255-1155
(717) 238-0575 Fax
schmidtt@pepperlaw.com
hullt@pepperlaw.com

Attorneys for Defendant Yvette Kane

## **CERTIFICATE OF NON-CONCURRENCE**

Undersigned counsel certifies that he notified Plaintiff by voicemail of Defendant's intent to file this Motion to Quash but received no response from Plaintiff regarding his concurrence/non-concurrence. Undersigned counsel assumes based on the responsive nature of this Motion to Quash and the lack of response from Plaintiff that Plaintiff does not concur in this Motion.

Tucker R. Hull (PA 306426)

I, Tucker R. Hull, hereby certify that on December 4, 2013, a copy of the foregoing Defendant's Motion to Quash Plaintiff's Motion for Sanctions was served via U.S. Mail, First Class, postage prepaid, and by FedEx Overnight Delivery, signature not required, upon the following:

Mr. Stephen G. Conklin 22 Mairdale Street Pittsburgh, PA 15214

Tucker R. Hull (PA 306426)

Thomas B. Schmidt, III, (PA 19196) Tucker R. Hull (PA 306426) PEPPER HAMILTON LLP Suite 200, 100 Market Street P.O. Box 1181 Harrisburg, PA 17108-1181 (717) 255-1155 (717) 238-0575 Fax Attorneys for Defendant

STEPHEN G. CONKLIN, : IN THE COURT OF COMMON PLEAS

DAUPHIN COUNTY, PENNSYLVANIA

0

Plaintiff

vs. : No. 2013 CV 2962

YVETTE KANE,

Defendant : CIVIL ACTION - LAW

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Dated: December 4, 2013

Respectfully submitted,

Thomas B. Schmidt, III (PA 19196)

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